DOCUMENT RESUME

ED 377 133 SO 024 617

AUTHOR	Johnson, Earl, Jr., Ed.
TITLE	Equal Justice Under Law.
INSTITUTION	American Bar Association, Chicago, Ill. Special Committee on Youth Education for Citizenship.
REPORT NO	ISSN-0147-8648
PUB DATE	94
NOTE	77p.
AVAILABLE FROM	American Bar Association, Youth Education for Citizenship, 541 North Fairbanks Court, Chicago, IL 60611-3314 ($6).
PUB TYPE	Guides - Classroom Use - Teaching Guides (For Teacher) (052) -- Historical Materials (060)
JOURNAL CIT	Update on Law-Related Education; v18 n3 Spec Iss Fall 1994
EDRS PRICE	MF01/PC04 Plus Postage.
DESCRIPTORS	Citizenship Education; Civil Law; Criminal Law; Elementary Secondary Education; Instructional Materials; *Law Related Education; *Legal Aid; Social Studies; Teaching Methods
IDENTIFIERS	*Bill of Rights; United States Constitution

ABSTRACT

This special theme issue of "Update on Law-Related Education" "tells about the past, present, and future of equal legal representation for all in our society." It is dedicated to the history and heroes of legal aid for the poor and the need to further that cause if the United States hopes to achieve equal justice for all. In his foreword, Justice Earl Johnson, Jr. of the California Court of Appeal insists that poor and even middle-class citizens who cannot afford lawyers stand no chance of attaining justice in court and that justice for all must mean lawyers for all. R. James Steiner and Carol J. Holahan outline the history of legal aid for civil cases in the United States beginning with the foundation of the German Legal Aid Society in New York City in 1876 and tracing the spread of similar societies to other cities by the turn of the century. The article describes the creation of the American Bar Association's Standing Committee on Legal Aid in the 1920s and of the Legal Services Corporation in 1975. Judy Norris outlines the history of indigent defense in the United States, describing the 1963 Supreme Court decision in Gideon v. Wainwright which guarantees counsel to the poor. Other articles highlight the heroes of legal aid, interview leading figures in the movement today, and feature the history of the Legal Aid Society of New York. Lesson plans introduce the Bill of Rights, call on students to discuss plans for developing legal aid programs, and evoke discussion over the meaning of justice. Each of the lesson plans provide student handouts. (JD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

$6.00

Special Issue!

ED 377 133

...'s Equal Justice Child's Law Edition Lette...
...the Past, Present, and Future of Equal Legal...
...Representation for All in Our Society...
...nted by the Consortium for the National Equal...
...ed Library, the ABA Standing Committee on...
...al Aid and Indigent Defendants, and the ABA...
...Committee on Youth Education for Citizenship...

...s! Teacher's guide for new videotape chronicling the 1876...
...shment of The Legal Aid Society of New York—America's first...

FALL 1994 / VOL. 18 NO. 3

UPDATE ON LAW-RELATED EDUCATION

American Bar Association Special Committee on Youth Education for Citizenship

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

- This document has been reproduced as received from the person or organization originating it
- ☐ Minor changes have been made to improve reproduction quality
- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
M.C. McKINNEY-BROWNING
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

SO 024 617

BEST COPY AVAILABLE

Equal Justice Under Law

Surely we must [teach] our children about good citizenship. They should know what legal representation of the poor means....They just should know much more than any of us have ever taken the time to try to teach them.

Judith S. Kaye
Chief Judge, New York Court of Appeals

Judge Kaye spoke these words at ceremonies in New York in 1994, celebrating over 100 years of legal aid and indigent defense in America. So eloquent in their simplicity, the words find a response in this special issue of *Update on Law-Related Education*, which presents the only instructional guide for teaching students about the status of civil and criminal legal services to the poor. Here, you will find the history, heroes, milestones, and yet-to-be-surmounted obstacles to providing everyone in our country with equal access to justice.

The instructional guide is presented by the Consortium for the National Equal Justice Library, the American Bar Association Standing Committee on Legal and Indigent Defendants (SCLAID), and the Special Committee on Youth Education for Citizenship (YEFC). Originally conceived by Harriet Wilson Ellis, development and collections consultant for the Consortium in Chicago, it becomes available as we are beginning to celebrate the anniversaries of a number of key events that have brought us as close as we are today in realizing the ideal of equal justice.

In 1994-95 come the 30th anniversaries of both the National Defender Project and the creation of the Office of Economic Opportunity (OEO) Legal Services Program, made possible through the ABA's support, led by then-ABA President, U.S. Supreme Court Justice Lewis F. Powell, Jr. The 20th Anniversary of the Legal Services Corporation also takes place, along with the 15th anniversary of the ABA Pro Bono Activation Project. In addition, the 75th anniversary of the ABA Standing Committee on Legal Aid and Indigent Defendants will be observed, having as its first chair Charles Evans Hughes, who later became Chief Justice of the U.S. Supreme Court. In 1996, we will celebrate the 120th anniversary of the establishment of The Legal Aid Society of New York, as our country's first legal aid organization.

The instructional guide also commemorates the upcoming dedication of the National Equal Justice Library scheduled for Law Day, May 1, 1995, at Washington College of Law, The American University in Washington, D.C.

On behalf of the Consortium, SCLAID, and YEFC, I thank all the attorneys, educators, writers, and editors who made this instructional guide possible. Special acknowledgment goes to our subcommittee members, whose guidance was essential to this ground-breaking accomplishment: guest editor Justice Earl Johnson, Jr.; Susan B. Lindenauer; Michael A. Millemann; Robert J. Rhudy; L. Jonathan Ross; Lynn Ste.man; and, especially, Harriet Wilson Ellis, without whose inspiration, dedication, and determination, schools would still lack this important teaching tool.

Ironically, most people in the United States today assume that the poor are entitled to free legal services in all criminal and civil cases in which they might be involved. This instructional guide is presented with the hope of replacing that myth for our emerging generation with a clear understanding of how far we have come, and how much farther they can take us in making equal justice for all a reality. Perhaps Bob Rhudy said it best at the very start of our project: "Much is accomplished. Much is to be done." So simple. So eloquent. And so true.

Seva Johnson

Seva Johnson
Editorial Director
Youth Education Publications

Front Cover Illustration by DePinto Graphic Design
Produced by Creative Services Associates, Inc.
© 1994 American Bar Association, 541 N. Fairbanks Court, Chicago, IL 60611-3314
ISSN 0147-8648 PC #738-0100-1803

Funding for this issue has been provided by the American Bar Association Fund for Justice and Education; we are grateful for their support.

Update on Law-Related Education is published three times each year (winter, spring, fall) by the American Bar Association Special Committee on Youth Education for Citizenship. Chair: Al Ellis; Director, Youth Education Programs: Christine Watkins; Editorial Director, Youth Education Publications: Seva Johnson

Update helps classroom teachers and law-related education program developers educate students about the law and legal issues. The views expressed in this document are those of the authors and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association, the Fund for Justice and Education, or the Special Committee on Youth Education for Citizenship.

A one-year subscription to the UPDATE PLUS package costs $25.00 and includes three issues each of *Update on Law-Related Education*, *Update on the Courts*, *LRE Report* with the Plus Poster Page, and the special Student *Update* Edition for Law Day each spring. For subscription and back issue information, contact American Bar Association/YEFC, 541 N. Fairbanks Court, Chicago, IL 60611-3314; (312) 988-5735.
FOR CUSTOMER SERVICE CALL (312) 988-5522.
All rights reserved. Printed in the United States of America.

DON'T MISS OUR SPECIAL "LIBERTY, DIVERSITY, AND THE LAW" EDITION SCHEDULED FOR PUBLICATION THIS WINTER!

BEST COPY AVAILABLE

Contents

Volume 18, Number 3
Fall 1994

Equal Justice Under Law

The history and significance of the legal aid, indigent defense, and pro bono movements advancing equal justice in America, and a comparison of efforts toward this goal in other countries

2 Foreword
Earl Johnson, Jr.

4 A Salute to the National Equal Justice Library
Harriet Wilson Ellis

6 History of Legal Aid in the United States
R. James Steiner and Carol Holahan trace the growth of civil legal services, spotlight "Heroes of Legal Aid," and summarize "Benchmark Civil Cases."

14 **Teaching Strategy**—Students Take Charge
R. James Steiner and Carol Holahan help students assess the ways that legal aid can best be provided to meet the needs of the poor.

16 History of Indigent Defense in the United States
Judy Norris traces the extension of indigent criminal defense, recognizes "Heroes of Indigent Defense," and cites "Benchmark Indigent Defense Cases." This section also includes "Legal Services and American Cities," a description of civil and criminal legal services in five American Cities.

24 **Student Handout**—The American Bill of Rights
Judy Norris lists the amendments in the Bill of Rights and helps students examine their application in criminal law.

26 Round Table
Frank Kopecky and Christopher Kopecky present the opinions of legal professionals concerning the present delivery of legal services to the poor.

38 Vignettes... from lives devoted to serving the poor
Monica Whitaker and Mary Feely highlight the work of several attorneys who serve the poor, and focus on individuals who have been helped by legal services.

44 **Teaching Strategy**—You Be the Judge
Through a simulation activity, Joseph L. Daly helps students assess the meaning of "justice" and the importance of legal representation.

47 Comparative Legal Services
Edward M. Wise compares the systems that different nations have for providing legal services to the poor.

52 **Teaching Strategy**—Justice for All?
Julia Ann Gold gives students an opportunity to consider if access to representation is equally important in civil and criminal cases.

55 Right to Counsel
Through landmark cases, John W. Guendelsberger explores the controversy over a person's right to a lawyer and provides student activities to develop understandings.

59 **Student Forum**
Should the Poor Have Free Legal Representation?
Margaret Fisher provides a forum for students to express their opinions about free legal representation of the poor.

62 **Forum Ballot**
Free Legal Representation of Poor People: What Should Society Do?

63 Resources

64 Equal Justice Topics

Update on Law-Related Education Editorial Advisory Board

Leanna Landsmann, *Chair*
Leanna Landsmann, Inc.
New York, New York

Lee Arbetman
National Institute for Citizen Education in the Law
Washington, D.C.

Ann Blum
Carl Vinson Institute of Government
The University of Georgia
Athens, Georgia

Marshall Croddy
Constitutional Rights Foundation
Los Angeles, California

Lorene Ely
South Mountain High School
Phoenix, Arizona

Frank Kopecky
Sangamon State University
Center for Legal Studies
Springfield, Illinois

Michael H. Reggio
Oklahoma Bar Association
Oklahoma City, Oklahoma

Beverly Barr Vaughan
Law and Government Magnet
Marshall High School
Rochester, New York

Foreword

The Pledge of Allegiance.

You probably have recited the words of the pledge many times, even hundreds of times, in your lives. But have you thought about what it says about the defining political values of our nation? Think about it. The Pledge of Allegiance mentions only two—first, "liberty," and second, "justice for all."

This issue of *Update on Law-Related Education* has more to do with that second ringing phrase, "justice for all," than anything that has ever appeared in this publication—indeed, probably more than anything you have ever read in your lifetime. In these pages, you will learn some disturbing facts, such as that "justice for all" remains more a promise than a reality in contemporary America. But you will also learn of some hopeful progress, particularly in the last 30 years. And you will read some inspiring stories about the everyday heroics of people, most of them lawyers, who spend their lives delivering on this nation's promise, at least for some lucky people.

I have been a judge for a dozen years. If I had any doubts before going on the bench, I can now assure you from personal experience that no one can hope to get justice in America's courts unless they have a lawyer to represent them. I have seen it countless times in the cases appealed to our court. Those without lawyers, and there are many, don't stand a chance. They inevitably lose, even when they may be in the right, because they can't match the knowledge and skills of the lawyers representing the other side. It is no accident that it takes four years of college, three years of law school, and then usually several years' experience before one is ready to prepare and present a case in a courtroom. I often liken unrepresented nonlawyers trying to handle their own legal cases to the unarmed Christians forced to face the lions in a Roman arena.

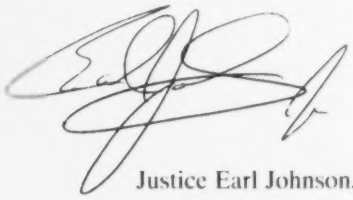
What this all means, of course, is that there can be no "justice for all" unless there are "lawyers for all." Lawyers, for good reason, are highly educated professionals. Unfortunately, that also means they cost money, too much for poor people and, quite frankly, for many middle-income people as well. The only way to make justice available to millions of Americans is to somehow provide them with the lawyers without which justice is impossible. In practice, that's what it means to deliver on the promise of "justice for all" in modern-day America.

If you are a student from a family of limited means, you may already have experienced how difficult it is to face a serious legal problem without a lawyer. But if you are a student from a family with plenty of money that can afford to hire a lawyer when it needs one, why should you care whether less fortunate families can afford to get justice? I would answer with another question: What sort of country do we want to live in—one in which the honest pledge of allegiance to the flag would say "with justice for some and injustice for the rest" or "justice for those who can afford it and injustice for those who can't"? Or do we want to live in a nation which indeed guarantees justice for all its citizens?

You might ask yourself another question. If you or someone in your family had to go to court without a lawyer and the other side had one, would you feel that was justice, that you had a fair chance of winning? If you wouldn't feel that you had a fair chance, it can't be justice for any of the millions of others who are forced into that situation every year because they lack the money to hire a lawyer. I think each one of us—rich, poor, or middle class—has a stake in making sure our country lives up to its promise of "justice for all" and in supplying the public support required to make that true.

The great American statesman, Daniel Webster, probably said it best, "Justice, sir, is the great interest of man on earth." Ours is a nation dedicated to the pursuit of that great interest. Yet justice cannot exist in a society unless it is available to every one of its citizens. Thus, we have an interest in seeing that each of us receives justice in our nation's legal system.

By 1996 the nation's capital will have a new library and museum dedicated to America's long and ongoing struggle toward equal justice for all citizens. Located at the law school of The American University, it will be called the National Equal Justice Library. The library and museum will display the history of what has gone before and house the information needed to move forward. If you visit Washington, D.C., in 1996 or after, I hope you will take the time to visit the National Equal Justice Library and learn still more about America's continuing pursuit of "equal justice for all."



Justice Earl Johnson, Jr.
California Court of Appeal
President, Consortium for the
National Equal Justice Library
Guest Editor

PHOTO: REUTERS/BETTMANN

Equal Justice Edition Subcommittee

Earl Johnson, Jr.
Associate Justice, California Court of Appeal, formerly the Director of the Legal Services Program of the Office of Economic Opportunity (the predecessor of the Legal Services Corporation) and later a Professor of Law at University of Southern California Law Center; author of *Justice and Reform* and co-author of *Toward Equal Justice*, two books about legal representation of the poor; President of the Consortium for the National Equal Justice Library, Inc., and Chair of the "Access to Justice" subcommittee of the ABA Consortium on Legal Services and the Public; "Appellate Justice of the Year" award from the Los Angeles Trial Lawyers Association, first annual "Loren Miller Legal Services" award from California State Bar.

Harriet Wilson Ellis
Development and Collections Consultant for the National Equal Justice Library; first Public Affairs Director for the Legal Services Corporation in Washington, D.C.; former Director of the Office of the President of the American Bar Association; former Vice-President of Programming and Research for In-Court Television (now Court TV); author and video consultant, "Report on the Solo and Small Firm Lawyer in American Society" for the New York State Bar Association Task Force on Solo and Small Firm Practitioners; Project Director of the American Bar Association/American Medical Association Partnership Against Drug and Alcohol Abuse.

Susan B. Lindenauer
Counsel to the Executive Director of The Legal Aid Society of New York; member, New York State Bar Association House of Delegates, and officer, Criminal Justice Section; former chair, Committee on Legal Assistance of the Association of Bar of City of New York and former chair, Committee on Legal Aid of New York State Bar Association; recipient, New York County Lawyers' Association Award for Outstanding Public Service; President, Columbia University Law School Association, member, Columbia University School of Law, Board of Visitors, and cochair, Committee on Public Interest and Pro Bono.

Michael A. Millemann
Jacob A. France Professor of Public Interest Law, Director, Clinical Law Program, and Professor of Constitutional Law at the University of Maryland School of Law in Baltimore; former Chief General Counsel and Chief of the Civil Division, Maryland Office of the Attorney General; former Director of Litigation, Multnomah County Legal Aid Program; various positions, the National Prison Project and The Baltimore Legal Aid Bureau; Reginald Heber Smith Fellow, Georgetown Law Center; recipient, ABA Litigation Section John Minor Wisdom Public Interest Award.

Robert J. Rhudy
Executive Director, Maryland Legal Services Corporation; Chairman, Legal Services to Indigents Committee, Maryland State Bar Association; former President, National Association of IOLTA Programs, Inc., Executive Director, Coalition for Legal Services, Washington, D.C., Chief Attorney, Legal Aid Bureau, Baltimore, and President, Iowa Civil Liberties Union.

L. Jonathan Ross
Trial Lawyer, Wiggin & Nourie, P.A., Manchester, New Hampshire; cofounder, Bar Leaders for the Preservation of Legal Services for the Poor; 1986 recipient, Arthur von Briesen Award, National Legal Aid and Defender Association; member, ABA Standing Committee on Legal Aid and Indigent Defendants; past president, New Hampshire Bar Association and New England Bar Association.

Lynn Sterman
Assistant director of the American Bar Association Division for Legal Services and committee counsel for the Standing Committees on Legal Aid and Indigent Defendants and Lawyers' Public Service Responsibility.

BEST COPY AVAILABLE

A Salute to the National Equal Justice Library

EQUAL JUSTICE UNDER LAW

The history and significance of the legal aid, indigent defense, and pro bono movements advancing equal justice in America, and a comparison of efforts toward this goal in other countries

Few times are as exhilarating as when something emerges that is a true first, serving an overlooked, but important purpose. So it is with the new National Equal Justice Library to be located in space donated by Washington College of Law of The American University, Washington, D.C., in its new law school building.

The library will be our country's first national institution to document America's over-a-century-long commitment to advancing equal justice through legal representation of the poor including the legal aid, indigent defense, and pro bono movements.

Despite the struggle to make good on our country's promise of equal justice through these efforts for more than 100 years, little until now has been done to educate the public about these essential initiatives and the people who conceived and carried them out. There have been many from many walks of life: legislators, government officials, jurists, public-policy makers, bar association leaders, legal educators, and numerous other advocates.

But most have been the hundreds of thousands of lawyers who have dedicated—and continue to dedicate—their careers as legal services lawyers representing the poor in civil matters; as defenders providing counsel to indigents in criminal cases; and as private lawyers volunteering countless hours pro bono to both of these pursuits.

They are lawyers who have made a difference. They are from diverse backgrounds, serving clients from diverse backgrounds, the latter with the common link of being economically disadvantaged, underrepresented, and unable to afford access to equal justice.

Through the efforts of these lawyers and the legal aid, indigent defense, and pro bono movements, millions of Americans have been provided access to equal justice that otherwise would have been denied. And through these efforts, landmark cases bringing the ideal of equal justice closer to reality have been won—*Gideon v. Wainwright*, for example, establishing the right to counsel for indigents in state criminal prosecutions. There have been many other landmark cases, both criminal and civil. But much remains to be done.

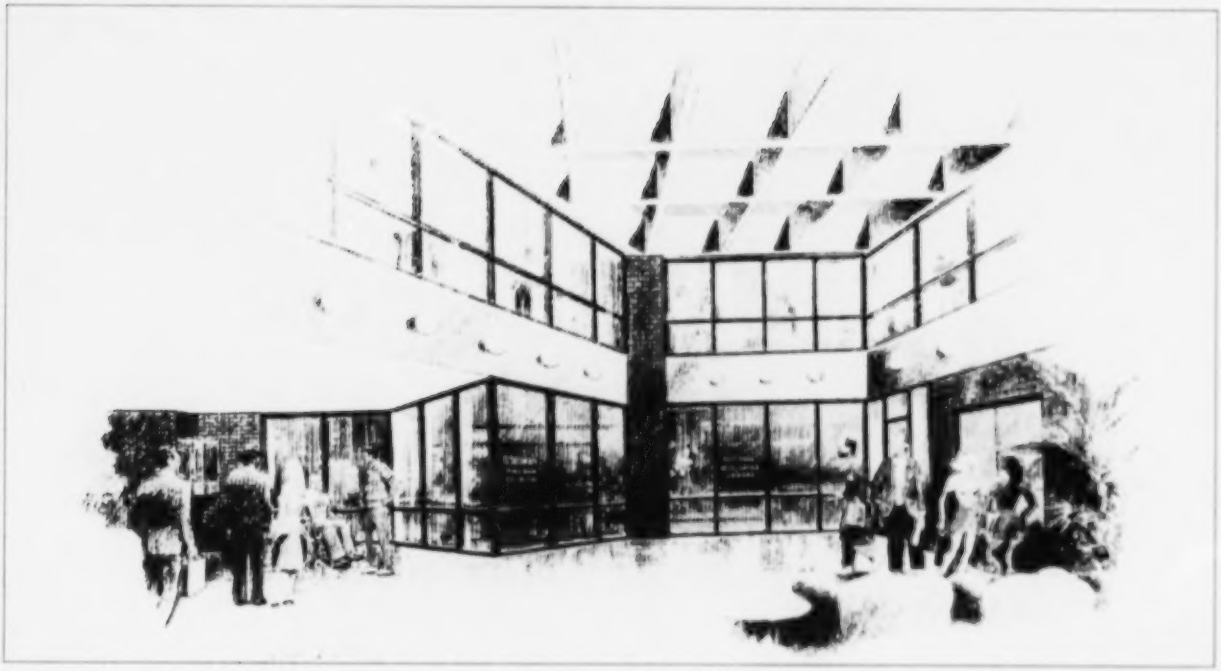
The instructional guide presented in this issue is the first comprehensive presentation for school use detailing this significant, yet basically unrecognized piece of America's history, which will be preserved in the National Equal Justice Library.

The library will be our nation's most comprehensive repository of published and unpublished materials, including oral histories, on the organization, financing, and delivery of legal representation to the poor in civil and criminal matters.

These collections will provide information for building on past experience to help solve current access-to-justice problems and to improve meeting the legal needs of the poor and those of low-income people in the future. By capturing this information, which now exists in scattered locations and is at a high risk of being lost, the library has an overall objective of helping to make the ideal of equal justice a reality.

Each of the library's collections will be accessible nationally and worldwide through telecommunications and computer links, along with a high-tech imaging process. Moreover, collections will trace how other countries deliver legal representation to the poor, which, too, is covered in the following pages.

The National Equal Justice Library evolved through the inspiration and persistence of Guest Editor Justice Earl Johnson, Jr., of the California Court of Appeal. An early and tireless legal services advocate, Justice Johnson was the Director of the Office of Economic



Opportunity Legal Services Program in the 1960s. The library of which Justice Johnson is president is cosponsored by a consortium comprised of the American Bar Association, the National Legal Aid and Defender Association, and the American Association of Law Libraries.

The library's Honorary Co-chairs are former United States Supreme Court Justice William J. Brennan, Jr., former U.S. Senator Warren B. Rudman, and the Honorable Sargent Shriver. Each was selected for courageous leadership and support of the cause symbolized by the National Equal Justice Library, scheduled to be dedicated in the spring of 1995 in Washington, D.C.

The Consortium has a 23-member Board of Directors and a National Development Council with members from around the country. Each member brings distinction for his or her ongoing work and commitment to legal aid, defender, and pro bono programs, representing these communities, as well as academia, library science, and the bench.

On behalf of the board and the National Development Council, we want to thank Mabel McKinney-Browning, Director of the ABA Public Education Division, for her visionary commitment to producing this instructional guide, without which it would not have happened. We also want to thank Seva Johnson, Editorial Director of the ABA Youth Education Publications, and editor of this special *Update* issue, for her talent in making it come alive; and the ABA Standing Committee on Legal Aid and Indigent Defendants and the ABA Special Committee on Youth Education for Citizenship for their valued support.

We further are indebted to everyone working on the production of this guide for their research and writing efforts, expertise, invaluable insights, and time. Those, too, who gave freely of their knowledge and time for interviews are to be thanked, as are the members of the subcommittee, named previously, for their special and rich contributions.

We believe that this instructional guide is a vital first step in creating a better public understanding of the forces at work in America to meet our country's promise of equal justice. Such enhanced awareness, we also believe, helps to reinforce public confidence in our democracy, a model for the world. For this feat, one of the library's primary missions, we are indeed grateful and hope that you find this instructional guide similarly useful.

Harriet W. Ellis

Harriet Wilson Ellis
Development and Collections Consultant for the National Equal Justice Library

History of Legal Aid in the United States

Making good on our country's promise of equal justice for all

R. James Steiner & Carol J. Holahan

Background

Today, legal aid is any of several programs that provide legal services to people who cannot afford to hire a lawyer when they are involved in a civil case, either as a plaintiff or a defendant. Some legal aid is funded by government at the local, state, and federal levels. Some is provided by individual lawyers, lawyers' associations, and other organizations.

Legal aid agencies often handle these cases, which can include divorces and child custody cases, property disputes, and job and rent disputes. Yet, at one time people who could not afford a lawyer had no way of resolving such disputes through the judicial system.

THE NEW YORK LEGAL AID SOCIETY

1876—When It All Began

The nation's centennial in 1876 welcomed the creation of the German Legal Aid Society in New York City. This society is credited with being the first independent legal services agency to help poor people. It was set up in response to years of mistreatment of poor people, especially immigrants, by employers and landlords.

In 1880 New York patent attorney Arthur von Briesen became the head of the German Legal Aid Society and expanded the concept of legal aid across the country and throughout Europe. Von Briesen believed that everyone had the right to seek justice through the court system. He saw legal aid not as charity but as a way to provide justice for all. By 1896 the organization had become simply The Legal Aid Society.

The 1900s—Reaching Other Cities

By the turn of the century, a small number of cities besides New York had set up legal aid organizations. These included Chicago and Boston.

The number of cities establishing programs jumped between 1900 and 1920. The University of Denver created a clinical legal program in 1904, which was the first of its kind affiliated with a law school and which became the nucleus of the Denver Legal Aid Society.

By 1917 various bar associations (made up of professional lawyers), private organizations, municipalities, and law schools supported 41 legal aid offices coast to coast.

Any notion that this increase was enough to meet the needs of a growing population of poor families was dashed in the 1919 book *Justice and the Poor* by Boston lawyer Reginald Heber Smith. Funded as a study for the Carnegie Foundation, Smith's book

Attorneys Steiner and Holahan began their trial careers as student advocates for the Suffolk University Hispanic Clinical Program (SUCLINICA) affiliated with Greater Boston Legal Services. Both remain active in providing pro bono legal services support in their community. Attorney Steiner chairs the New Hampshire LRE Board.

concluded that the poor in America lacked meaningful access to the courts.

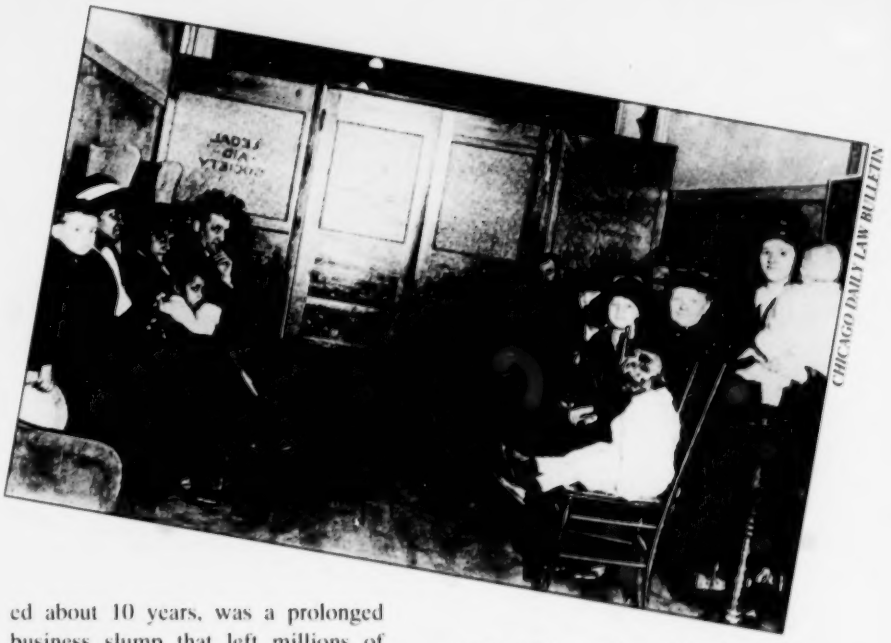
The 1920s—National Support and Recognition

Smith's book led the American Bar Association (ABA) in 1920 to develop a formal relationship with existing legal aid programs. Charles Evans Hughes, probably the leading lawyer of his generation, headed the newly created ABA Special Committee on Legal Aid. A year later, Smith became chair of what had evolved into the Standing Committee on Legal Aid.

In 1923 the nation's loosely knit legal aid offices joined forces and formed the National Association of Legal Aid Organizations. Today, the association's successor is known as the National Legal Aid and Defender Association. For the remainder of the 1920s, the money devoted to legal aid more than doubled, and more than 30 new local legal aid organizations joined the national organization.

The 1930s—Effects of National Economic Crisis

With the Great Depression of the 1930s, the financial support for legal aid disappeared. The Depression, which began in October 1929 and lasted about 10 years, was a prolonged business slump that left millions of Americans penniless.


CHICAGO DAILY LAW BULLETIN

Legal aid cases increased from 171,000 nationally in 1929 to 331,000 in 1933. Despite this, only 229 of New York's 17,000 lawyers contributed to the Legal Aid Society in 1934. Clients became dissatisfied with the service provided. Demand for legal aid actually dropped during the rest of the 1930s.

Some innovations in legal aid did develop during this rather troubled period in its history. The Philadelphia bar sponsored neighborhood law offices run by attorneys in private practice. The Los Angeles Bar Association started the first lawyer referral service in 1937. This service advised people seeking legal help about competent local lawyers who could help them. Other bars followed suit.

The 1940s and 1950s—Expanding Service and Demand

During the 1940s and 1950s, legal services expanded. Eventually, the percentage of major cities lacking legal aid fell to 21 percent, half the previous level. The real thanks for this initiative rests overseas, as a result of a British movement in legal aid on a national scale. The Legal Aid and Advice Act of 1949 adopted in England provided

1876 German Legal Aid Society forms ▼

Justice and the Poor is published 1919 ▼

1870s | 1880s | 1890s | 1900s | 1910s

THE NEW YORK LEGAL AID SOCIETY

government financing for legal representation of the poor by attorneys in private practice. Fearing a similar movement in the United States, local bars and organizations made sure control remained local by providing enough support to thwart a national program.

Demand, however, continued to outpace the growing supply of legal aid. Legal aid supporters learned a significant lesson during the Depression and subsequent recovery: They could not rely on private, local funding to keep legal services programs alive during an economic crisis.

The 1960s—A Time of Renaissance

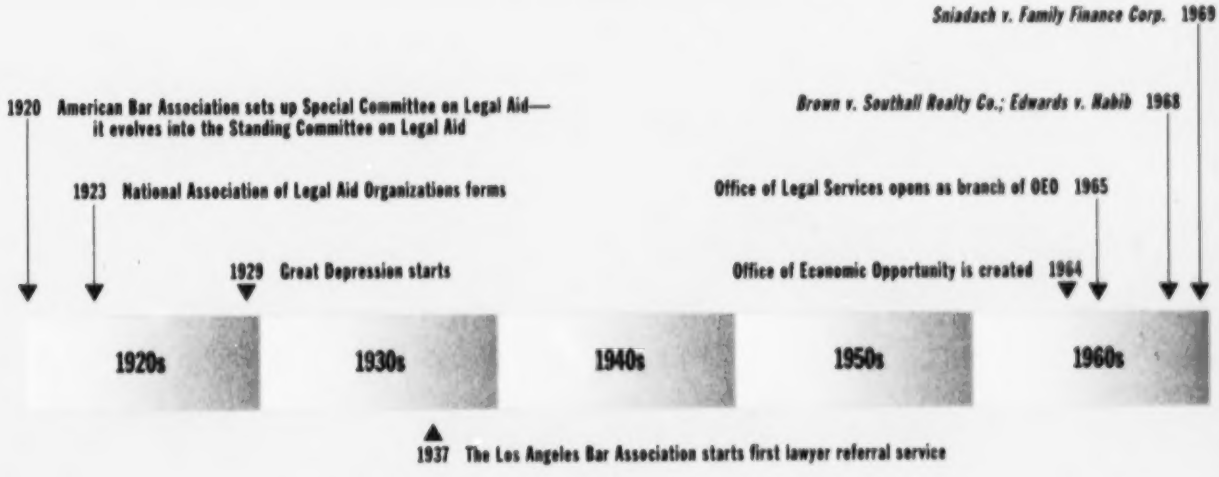
The first federal funding of legal aid services for civil matters was part of the Economic Opportunity Act of 1964. This law created the Office of Economic Opportunity (OEO) as part of the Executive Office of the President. Former vice-presidential candidate Sargent Shriver served as the first director.

That same year, newly elected ABA President and future Supreme Court Justice Lewis Powell made the expansion of legal services a priority during his term in office. Such ABA support for legal services was unprecedented.

In 1965 the Office of Legal Services emerged as a branch of the OEO. The creation of the Office of Legal Services expanded the notion of legal services to the poor as an area of concentration within the legal profession, known as poverty law. Sargent Shriver appointed Clinton Bamberger as the program's first director.

Bamberger came to the program from private practice in Baltimore. What he lacked in experience with legal services he more than made up for in energy. He developed strong national support for legal services for the poor and promoted many policies governing legal aid programs.

Earl Johnson, Jr., the program's first deputy director, succeeded Bamberger in June 1966. Unlike Bamberger, Johnson had been a neighborhood lawyer serving poor people in Washington. The guidance and leadership provided by these first two directors ensured that federally funded legal services programs were built on strong foundations.


Sniadach v. Family Finance Corp. 1969
1920 American Bar Association sets up Special Committee on Legal Aid—it evolves into the Standing Committee on Legal Aid
Brown v. Southall Realty Co.; Edwards v. Habib 1968
1923 National Association of Legal Aid Organizations forms
Office of Legal Services opens as branch of OEO 1965
1929 Great Depression starts
Office of Economic Opportunity is created 1964
1920s
1930s
1940s
1950s
1960s
1937 The Los Angeles Bar Association starts first lawyer referral service

That first year the Office of Legal Services made 130 program grants. Funding surpassed $20 million. In 1968, 260 programs were funded. Legal services covered every state but North Dakota (where the governor vetoed the grants). The Office of Legal Services budget grew to $71.5 million by 1972.

During Johnson's tenure as Legal Services Program director, backup centers received significant attention. These centers developed expertise in specialized areas, such as welfare, housing, Native American issues, or the elderly.

Initial backup centers were housed at law schools and each center focused on a particular topic, such as housing. These schools developed guides for legal aid lawyers on how law on that topic was developing and also assisted local legal services lawyers in important cases. This guidance, in turn, helped legal aid lawyers give their clients the best service.

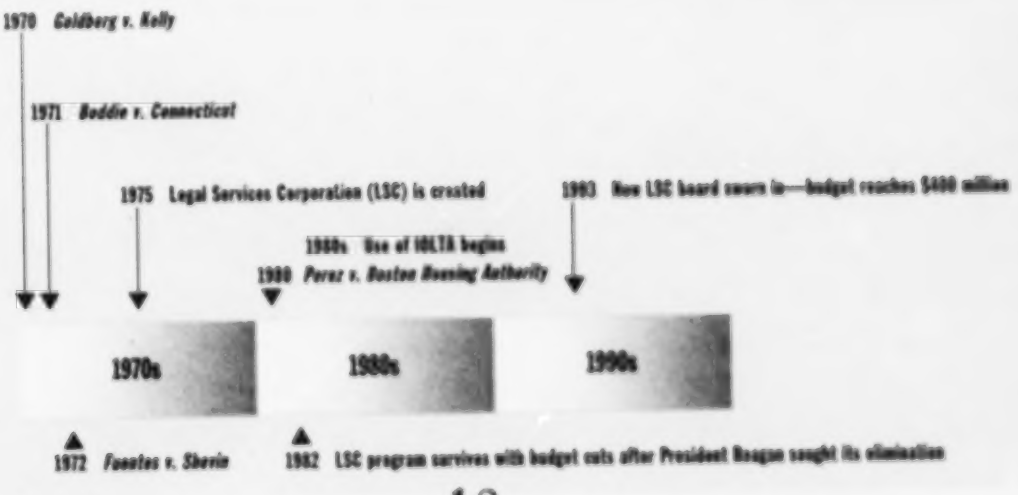
The Reginald Heber Smith Fellowship Program also developed during this time. This program recruited and trained lawyers in poverty law and placed them in local programs. At one time these "Reggies" comprised 25 percent of the lawyers serving in the nation's legal services program.

Legal services organizations in the states often face a variety of political challenges. One significant battle concerned an attempt in 1969 by Senator George Murphy of California to amend the Economic Opportunity Act. Murphy sought to block legal services from suing other government programs that broke the law by not complying with legitimate claims on behalf of legal services clients. The attempt failed, but the issue lives on. In June 1994, propriety of legal aid suing state agencies was being discussed in New Hampshire newspapers, for example.

The fear that political pressure could erode the legal services programs led supporters to consider an alternative form of organization that could be shielded from politics.

The 1970s—Ups and Downs of the Legal Services Corporation

Political pressure notwithstanding, by 1973 the Office of Legal Services had


1970 Goldberg v. Kelly
1971 Boddie v. Connecticut
1975 Legal Services Corporation (LSC) is created
1993 New LSC board sworn in—budget reaches $400 million
1980s Use of IOLTA begins
1980 Perez v. Boston Housing Authority
1970s
1980s
1990s
1972 Fuentes v. Shevin
1982 LSC program survives with budget cuts after President Reagan sought its elimination

more than 2,600 lawyers working in over 900 law offices and involved in over 250 community-based agencies.

After three years of legislative battles, compromise and negotiation finally led Congress to close the Office of Legal Services and transfer its functions to the new Legal Services Corporation (LSC) in 1975. This nonprofit organization is an independent voice supporting legal representation for people unable to afford private counsel.

LSC is governed by an 11-member board appointed by the President and confirmed by the U.S. Senate. The corporation receives an annual appropriation from Congress for its operations and for grants to local organizations providing legal services.

The act that created the LSC restricted its activities in various ways. Of the 11 board members, only 6 can belong to the same political party. The type of cases pursued and the activities of participating attorneys are also restricted somewhat.

Amendments in 1977 liberalized many of the original restrictions imposed on the LSC. The amendments allowed attorneys to provide advice in school desegregation cases, although they could not represent clients in such cases. Previous restrictions on representing people claiming incorrect classification under the Military Selective Service Act were eliminated. Meetings of the Legal Services Corporation and its state advisory councils were required to be open meetings.

The LSC sought to meet a "minimum level of access." Its goal was to have two attorneys for every 10,000 clients. Growth over the next three years allowed legal services to meet the minimum access goal by 1980.

The 1980s—Fighting to Survive

The LSC met its peak budget of $321 million in 1981. That year LSC-funded programs employed 6,000 staff lawyers working in local legal services programs reaching virtually every county in the nation.

The next year and a new presidential administration brought severe budget cuts. LSC survived an attempt by President Reagan to eliminate the program, but not without a 25 percent budget cut. Subsequent increases were small so that funding by 1988, adjusted for inflation, was approximately 50 percent that of 1981.

Creative thinking led to the use of Interest on Lawyers' Trust Accounts (IOLTA) as a non-Legal Services Corporation method to subsidize legal services in the states. The concept is simple. Law firms hold a variety of funds in trust that cannot earn interest for their clients. During the 1980s, most states passed laws or court rules pooling those trust accounts and using the interest to fund civil legal services and other worthwhile justice programs.

Voluntary or *pro bono* (from Latin, for the public good) services by private attorneys also expanded greatly during the 1980s, with nearly 150,000 attorneys taking cases each year without charge. In the end, it was the private bar and other organizations that once again filled some of the gap in legal services available to the poor.

The 1990s—Continuing Service

In 1991–92, the National Legal Aid and Defender Association listed 2,369 main and branch offices in the United States and territories that provided civil legal assistance to people unable to afford private counsel.

These offices include about 4,800 attorneys and 2,000 paralegals supported by LSC today. To this list must be added an additional 130,000 private attorneys who take some pro bono or reduced-fee cases.

Legal services has proven to be a wonderful training ground for lawyers, too. It provides them with a quick entry into litigation and the experience of working with clients. We know. We tried our first cases in Chelsea District Court outside Boston, on behalf of tenants as part of the Suffolk University Hispanic Clinical Program (SUCLINICA). This program is affiliated with the Greater Boston Legal Services, the successor to the original Boston Legal Aid Society of 1900. ◆

I recognize there have been periods when the federal legal services program has been controversial. Much of the criticism has been unjustified. When migrant workers and other poor individuals assert their legal rights, they can offend powerful interests in society. That does not mean there is something wrong with the program; it means that it is doing its job.

Warren Rudman
Former U.S. Senator whose strong leadership in Congress allowed the survival of federally supported legal services in the 1980s

Heroes of Legal Aid

Many people have worked to make the promise of "justice for all" in our Pledge of Allegiance a reality. Here are some whose contributions were particularly noteworthy.

• **Arthur von Briesen** assumed the presidency of the German Legal Aid Society in New York in 1880. He was responsible for expanding legal aid throughout the United States and Europe in the late nineteenth century.

• **Reginald Heber Smith,** who started as a legal aid lawyer in Boston and later was a partner in a large law firm, published a book called *Justice and the Poor* in 1919. This book was the first definitive examination of the unfair administration of justice and its effect on the poor.

• **Charles Evans Hughes,** who had been a presidential candidate and later served as Chief Justice of the United States, headed the newly created American Bar Association (ABA) Special Committee on Legal Aid in 1920.

• **Harrison Tweed** served as the president of the New York Legal Aid Society and was a national leader of legal aid during the 1940s and 1950s.

• **Sargent Shriver** was the first director of the Office of Economic Opportunity (OEO), created in 1964 within the Executive Office of the President. Shriver envisioned a federally funded organization of lawyers representing the poor. As a result, the OEO Office of Legal Services was created.

• **Lewis F. Powell, Jr.,** president of the ABA in the mid-1960s, made the availability of legal counsel for poor people a priority and was instrumental in leading support of the ABA and the organized bar for federal funding of legal aid.

• **Clinton Bamberger,** a Baltimore attorney, became the first director of the Office of Legal Services in 1965.

• **F. Wm. McCalpin** as chair of the ABA Select Committee on the Availability of Legal Services in the mid-1960s mustered ABA support for the Office of Legal Services. He later chaired the board of directors of the Legal Services Corporation (LSC), which replaced the Office of Legal Services. Over 10 years later President Clinton appointed him to a new term on the LSC board.

Hillary Rodham Clinton: Defender of Legal Aid

REUTERS/BETTMANN

First Lady Hillary Rodham Clinton received a law degree from Yale University in 1973. She has worked to strengthen legal aid during her entire career, starting as a student intern at the Hartford Legal Services program.

That experience "gave me a real insight into the problems of the low income [people] and the way the legal system actually worked as opposed to what I was being told in the classroom," she said.

After graduation, Rodham Clinton became an attorney with the Children's Defense Fund in Washington, D.C. In January 1974, she joined the Nixon impeachment inquiry staff for the House of Representatives' Judiciary Committee.

Later in 1974, Rodham Clinton moved to Arkansas where she taught at the University of Arkansas School of Law in Fayetteville and founded the Ozark Legal Services program. This program gradually won the acceptance of the Arkansas Bar Association and other lawyers' groups.

The following year, Rodham Clinton became part of the Arkansas State Advisory Committee for the Legal Services Corporation. At that time most of the state had no legal services program, so she concentrated on expanding such services.

President Carter appointed her to the board of the Legal Services Corporation (LSC) in 1977. She chaired the board from 1978 until 1981. While she was leader of the LSC, its funding rose from $125 million to $321 million. During this time, legal aid became available in every congressional district of the United States.

Today, Rodham Clinton remains a firm supporter of legal services and hopes to see them grow. "The demand for legal services is so much greater given the economic pressures in our society," she said.

• **Edgar and Jean Cahn** were early advocates of a federally funded legal services program for civil matters. In 1964 they wrote a seminal article in the *Yale Law Review* called "The War on Poverty, a Civilian Perspective."

• **William Steiger** and **Walter Mondale** were legislators who cosponsored the bipartisan bill that created the Legal Services Corporation Act. Steiger, a Republican Congressman, and Mondale, a Democratic Senator, shared a commitment to the goal of equal justice for all. They overlooked political differences and joined in a common enterprise to pass this essential legislation.

• **Wm. Reece Smith, Jr.,** as president of the Florida bar in 1972, was instrumental in creating Florida Legal Service, Inc., the first statewide legal services program in Florida. As ABA president from 1980 to 1981, he led a march of bar leaders on Washington, D.C., to fight the elimination of the Legal Services Corporation proposed by President Reagan. He initiated the ABA's leadership activities to expand pro bono services throughout the United States.

• **Arthur England,** former chief justice of the Florida Supreme Court, led efforts to allow funds held in trust by law firms to earn interest. This interest in turn could be used to fund civil legal services for the poor. He won approval for the Interest on Lawyers' Trust Accounts (IOLTA) program in Florida in 1981. He then worked to expand it nationwide. As a result, more than $700 million have been generated for civil legal services to the poor since 1981. ◆

Benchmark Civil Cases

The following cases, won through the legal services movement, were significant in enabling poor people to obtain justice through our court system.

Landlord/Tenant Issues

Tenants in city slums and poor rural areas often live in unacceptable conditions, such as homes that seriously violate safety codes. Historically, courts considered a tenant's obligation to pay rent to be independent from the landlord's duty to correct defects. So they told tenants they had to pay their rent even though their apartments were unsafe and unhealthy. If they didn't, they were evicted no matter how bad their apartments were. Thus, tenants were often powerless to remedy safety violations, and those who tried feared reprisal from their landlords. A number of cases, however, armed tenants with the force of the law to improve their situations.

Brown v. Southall Realty Co., 237 A.2d 834 (D.C. App. 1968). The court considered whether a landlord was legally justified in evicting a tenant who withheld rent because the premises were uninhabitable. The court held that by leasing the premises with defects, the landlord violated housing regulations, and thus the lease was an illegal contract. The court determined that the tenant had no obligation to pay rent until the landlord corrected the defects.

Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968). The court considered whether a tenant—faced with eviction after complaining to authorities about the condition of the premises—could offer evidence that the landlord was retaliating for the complaint. The trial judge refused to allow the evidence relating to the landlord's motive, but the U.S. Court of Appeals reversed that decision. The court ordered a new trial at which proof of the landlord's motive would be a valid defense to the eviction.

Perez v. Boston Housing Authority, 400 N.E.2d 1231 (Mass. 1980). Tenants brought a class-action suit against the local housing authority for failing to follow court orders and a negotiated consent decree to provide decent, safe, and sanitary housing.

The court considered how to remedy the situation when a local housing authority refused, after many opportunities, to correct wholesale violations of the state sanitary code. The Housing Court appointed a receiver to take over the duties of the housing authority's board. That decision was upheld by the Massachusetts Supreme Court.

Due-Process Rights

Due process is a basic principle of American law. It requires the government to deal fairly with people who are accused of wrongdoing. The right to due process is protected by the Constitution. These cases have helped make that right a reality.

Goldberg v. Kelly, 397 U.S. 254 (1970). In a class-action suit, the plaintiff claimed New York violated the Constitution when it ended welfare benefits without first holding a hearing. The Supreme Court held that welfare is a right for those who qualify, so ending benefits without giving recipients the opportunity to be heard violated due process. The Court set requirements for a constitutional hearing, including the right to present evidence and cross-examine witnesses before an impartial decision maker.

Boddie v. Connecticut, 401 U.S. 371 (1971). The Court considered the constitutionality of a state's $60 fee for using the divorce court. The Court struck down the fee. It determined that due process required a meaningful opportunity to be heard.

Sniadach v. Family Finance Corp., 395 U.S. 337 (1969). The Court held that a state statute allowing wages to be garnished without prior notice to the debtor deprived the debtor of property without due process of law. Therefore, it violated the Fourteenth Amendment of the Constitution.

Fuentes v. Shevin, 407 U.S. 67 (1972). The Court found that a state statute allowing the sheriff to repossess property, without prior notice or hearing, when somebody failed to pay a debt deprived that person of property without due process of law. ◆

Vocabulary

class-action suit: a lawsuit brought on behalf of all to whom the case applies

consent decree: an agreement reached with the consent of the involved parties

garnished wages: money legally withheld from a paycheck by an employer as payment of the employee's debt to another party

plaintiff: person or group who files a lawsuit

Teaching Strategy

Students Take Charge

R. James Steiner & Carol J. Holahan

In this activity, students become decision makers. They are asked to decide how to make the American legal system available to all. They must determine how the system can provide legal aid to address civil law cases for all people in need.

Background

In the United States today, legal aid programs provide free legal services to poor people involved in civil law procedures. However, services and funding for them are limited. The programs must set priorities for meeting the most pressing needs. As a result, people who need help are often not given legal representation or equal justice.

Objectives

Students will have the opportunity to

- discuss the role of legal aid in administering justice
- consider ways in which all people—including poor people—can best be provided legal services for civil law cases

Target Group: Junior high and high school students

Time Needed: The activity can be tailored for a 60–90-minute presentation or expanded into a half- or full-day seminar. For a 60–90-minute session, the emphasis should be placed on understanding civil legal aid programs.

Materials Needed: Student Handout "Examining the Future of Legal Aid Programs"

Procedures

1. Since this activity provides an excellent opportunity to use a resource person, contact your local bar organization or legal aid program. Most communities have some type of legal services program and staff. Ask for a staff lawyer to visit your classroom to discuss his or her responsibilities in the community. Such a discussion will help your students focus on key issues being addressed by the local legal aid programs. Introduce the resource person and explain that he or she will be available for consultation throughout the activity.
2. Have the students review the articles in this issue discussing the history of civil legal services in the United States and any other resources addressing civil legal aid programs that you have available.
3. Make and distribute copies of the Student Handout. Then divide the class into groups of 5–8 students. Have each group choose a student who will present the plan developed by the group to the class. Explain that each group is responsible for devising a civil legal aid program that will best meet the needs of all people, not just those who can afford private legal representation. Explain that there is no right or wrong answer to this issue and that students should feel free to devise any type of program they wish.
4. Suggest that students address these questions during their brainstorming and discussion periods.
   - What priorities will you establish and why?
   - What type of organization do you think will best support legal aid programs? Will the organization be a national, statewide, or local program of legal assistance?
   - Who will be entitled to civil legal aid and why? What will be the financial and other criteria used to determine how services will be provided?
   - Will legal aid be offered to cover a vast variety of civil legal issues or limited to a number of selected issues? Will civil legal services groups be permitted to bring suits against public entities?
   - How will the program be funded? Should funding be coordinated at the national level; the local level through bar associations, law schools, or community groups; or a combination? Should funding be increased if population trends indicate a rise in the number of families living below the poverty level?
5. Have each group present its program to the class. Have the resource person conclude the session by summarizing the activity.

To the Resource Person

At the beginning of the activity, provide a brief synopsis of the services provided by the local legal aid program(s) and identify the strengths and weaknesses of the system. As students develop their plans in their discussion groups, you will serve as a roving consultant. In this role, you should provide any information students request and answer student questions. After students present their programs, you may wish to conclude the session by summarizing the activity and identifying the direction in which you see legal services developing in the future.

Student Handout

Examining the Future of Legal Aid Programs

The year is 2014. You are among a small group of experienced lawyers asked to chart the course of civil legal aid programs. You have been given absolute authority to discard existing programs, revise existing programs, or develop new programs.

You control both the funding and the decision-making process for legal aid programs. What would you determine are the priority civil legal programs needed to aid those who would otherwise be unable to afford legal services? Would you discard the present system and create something different? Would you maintain some national centralized control over legal aid, or would you place responsibility solely in local hands? Would you put money into a publicly funded local program, or would you use limited funding to encourage private firms to provide pro bono services? Would you be all things to all people, taking on all legal issues, or would you fund representation for only a limited number of selected issues? Would you make legal representation a guaranteed right for all poor people? How about the middle class? Would you require lawyers to provide representation to poor people without being paid for those services so they would be allowed to charge for their services only those who can afford to pay? The choice is yours.

Explain your program in the space provided. If you need more space, use the back of this handout and additional sheets of paper.

History of Indigent Defense in the United States

How a constitutional right slowly became a reality for many poor people accused of crimes

Judy Norris

Background

The process of providing justice to people accused of a crime has evolved slowly through the centuries. Only within the last few decades has the idea of equal justice for the poor gained ground in law, if not always in practice.

Criminal law is a branch of law that covers actions believed to harm society. Today in the United States, everyone who is accused of breaking a criminal law and, as a result, could be sent to prison is guaranteed the help of an attorney even if she or he cannot pay for one.

This article examines how lawsuits challenging the way our legal system worked led the U.S. Supreme Court to examine the Fifth, Sixth, and Fourteenth amendments to the U.S. Constitution. The Constitution is a document that describes America's fundamental laws and the rights of its citizens. Amendments are additions to the Constitution, which generally protect individual liberties.

The Supreme Court's interpretations of these amendments resulted in a guarantee that the government would pay a lawyer to defend poor people, or indigents, accused of a crime. This article will examine two methods of providing such legal services and discuss the difficulty of providing good and effective representation for criminal defendants who have little money.

Judy Norris is a graduate assistant in the legal studies program at Sangamon State University in Springfield, Illinois.

Trials of Long Ago

Throughout history, societies have used many different methods to decide whether those accused of wrongdoing were guilty or innocent. In ancient Greece and Babylon, trial by ordeal was a no-win situation. In the Greek water ordeal, for example, the accused was tossed into water. If the person sank, that was a sign of innocence. Those who rose to the top were declared guilty and put to death.

The ancient Greeks were the first to use jurors, who relied only on written evidence to find the accused guilty or innocent. The ancient Romans began the use of lawyers to advise clients and plead their cases in the courtroom.

In the twelfth century, England's King Henry II extended the king's rules to govern everyone in England. Called the Common Law, these rules made trials uniform; all those found guilty of a particular crime were given the same sentence. Juries were used. A judge played the role of umpire while two individuals told their versions of what took place.

This method of trial, the adversarial method, today is used in the United States. In the adversarial method, the person who best presents his or her case wins. Lawyers help people deal with the complicated procedures and terms of trials and defend their rights.

The Right to Counsel

In 1791 the states ratified the Bill of Rights, the first 10 amendments to the U.S. Constitution. The amendments were aimed at protecting the individual citizen from a powerful federal government. The right of accused people to have a lawyer defend them in all criminal cases comes from the Sixth Amendment.

A person who believes she or he has been wrongly convicted of a crime can appeal the decision. The person can ask a higher court to look at the records of the trial and decide whether the outcome was fair. The higher court's decision creates a precedent, or an example for other courts to follow when similar questions arise.

Law that is passed by legislators, such as members of Congress, is called statutory law. Case law—law decided by courts—is just as important as statutory law, because it tells people how written laws will be interpreted and enforced.

The right to have a lawyer in felony, or more serious, cases was gained through the appeal of a guilty verdict. In *Powell v. Alabama*, 287 U.S. 45 (1932), the Court overturned the conviction of several poor African-American youths because their convictions violated due process. The term *due process* comes from the Fifth Amendment. It means that people must receive fair treatment before being deprived of "life, liberty, or property."

The youths had been sentenced to die. The Court said their convictions without legal representation were very unfair. This ruling created a right to have legal counsel appointed, but only under special circumstances, such as when the defendant could receive the death penalty.

Ten years later, the Supreme Court wrestled with the idea of *when* a defense lawyer must be assigned in *Betts v. Brady*, 316 U.S. 455 (1942). The Court ruled that the lack of a lawyer violates due process only if a criminal case is unusually complicated or if the defendant is particularly unable to defend himself or herself.

The Fourteenth Amendment

To understand the controversy of when the right to legal counsel exists and when it does not, we must look at the Fourteenth Amendment. It states, "...nor shall any state deprive any person of life, liberty, or property, without due process of law."

In the *Betts* ruling, the Court said that the Sixth Amendment right to legal counsel was not binding on state courts. People on trial were automatically guaranteed legal assistance only in the federal courts and only if they faced felony charges. At the state level, a defense lawyer had to be appointed

Vocabulary

The *Bill of Rights* consists of the first 10 amendments to the U.S. Constitution providing for individual rights, freedoms, and protections.

A *crime* is wrongdoing that is forbidden by law.

Due-process rights are fundamental rights that require the government to treat people with fairness and justice.

The *Fifth Amendment* protects a person's right to remain silent during any stage of a criminal proceeding, from initial questioning through the trial. This amendment states that no one will be deprived of life, liberty, or property without due process.

The *Fourteenth Amendment* extends the constitutional rights and privileges of citizens dealing with federal authority, such as courts, to citizens dealing with state authority.

An *indigent defendant* is a person charged with a criminal offense who lacks the funds or ability to hire a defense lawyer.

Indigent defender methods include three types: (1) assigned counsel, in which the judge assigns a local lawyer who is paid for the work; (2) public defender systems, in which salaried full- or part-time attorneys are paid by the state to defend indigent people; and (3) contract defense systems, in which a private attorney or law firm bids annually for a contract to represent indigent people.

A *jury* is a certain number of people selected from a particular district, sworn to inquire of certain matters of fact and to declare the truth upon evidence brought before them.

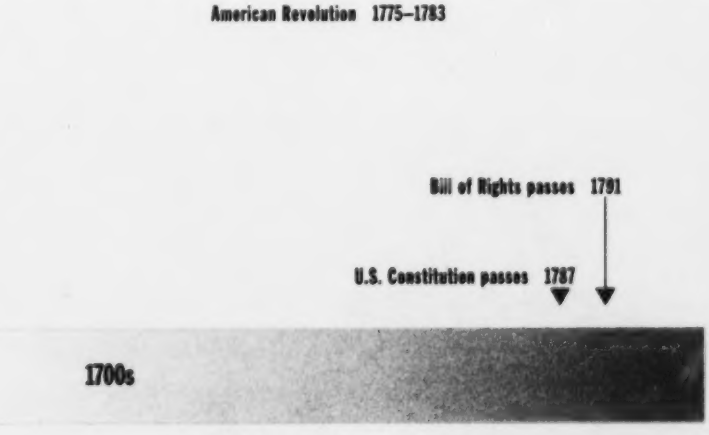
A plea bargain is the process by which the accused and the prosecutor in a criminal case settle the case to their mutual satisfaction, subject to approval by the judge. It usually involves the defendant pleading guilty to a lesser offense, or to only one or some of the charges, in return for a lighter sentence.

Pro bono describes legal services performed by a lawyer who is not paid to provide these services.

A *public defender* is an attorney employed by a government agency who works mainly to defend indigent people accused of criminal offenses.

The *Sixth Amendment* gives people the right to have a lawyer in all criminal cases.

The *U.S. Constitution* describes the nation's fundamental laws and the rights of its citizens.



THE NEW YORK LEGAL AID SOCIETY

only when a trial's outcome was extremely unfair.

Two Supreme Court justices dissented, or argued against, the *Betts* ruling. They said it created a double standard; defendants in federal courts received greater constitutional protection than those in state courts. Twenty years later, the Court agreed with this argument and the Court reversed the *Betts* decision.

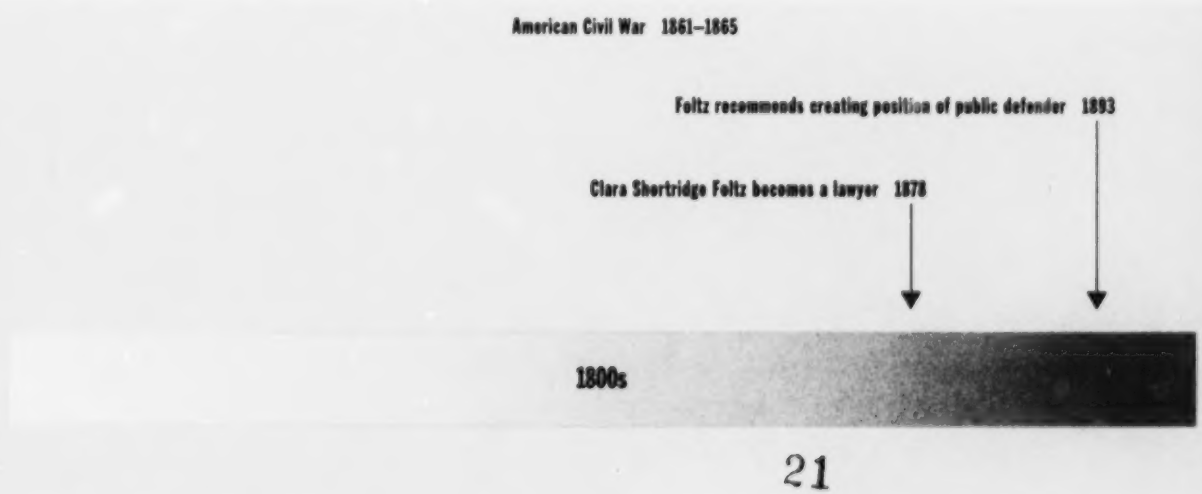
Gideon v. Wainwright, a Landmark Case

In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the U.S. Supreme Court held that the Sixth Amendment right to counsel was binding upon the states. Clarence Earl Gideon was a poor drifter accused of theft. He fought to have a lawyer appointed to his case. Following the precedent of the *Betts* decision, lower courts denied Gideon's request.

On Gideon's appeal to the Supreme Court, Justice Black wrote: "[I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. ... The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours." The court appointed Abe Fortas, a prominent attorney and later Supreme Court justice, to serve as Gideon's pro bono counsel. Fortas successfully pled Gideon's case. Gideon's conviction was overturned, and he was released from prison.

The issue of the right to counsel was not yet settled, however, because *Gideon* involved a felony, or serious charge. It did not address the right to counsel in misdemeanors, or less serious cases. The Court decided that point a decade later in *Argersinger v. Hamlin*, 407 U.S. 25 (1972). It ruled that in any case in which conviction could result in a prison term, counsel must be provided.

Just as important as whether counsel must be appointed is the question of when it must be granted. In *Miranda v. Arizona*, 384 U.S. 346 (1966), the Court said that a person in custody has the right to legal counsel when being questioned by the police or other law-enforcement officials. This is because the Fifth Amendment protects a person's right to avoid self-incrimination. Having a lawyer prevents the accused from giving answers that can make him or her look guilty, simply because the person does not know any better. When


American Civil War 1861–1865
Foltz recommends creating position of public defender 1893
Clara Shortridge Foltz becomes a lawyer 1878
1800s

suspects are told about this right, we say they are being read their "*Miranda* rights."

The Court recognized the special need for juveniles to have a lawyer in triallike hearings in *In re Gault*, 387 U.S. 1 (1967). Fifteen-year-old Gerald Gault was sentenced to serve time in a juvenile correctional center after court proceedings in which he had no lawyer. The Supreme Court reviewed and reversed his conviction.

Later that year, the Court extended the right to legal counsel. A defendant now can ask for a lawyer from the early stages of questioning and lineup to the final stages of sentencing and appeal.

While the idea that everyone should be represented in court—whether one can afford a lawyer or not—sounds good, it brings many problems. First, the huge number of cases and lack of funding means too few lawyers are willing to represent poor people. Second, because of the large demand for legal counsel, each lawyer may be required to take on more cases than he or she can handle. Third, if there is not enough public money to pay for a lawyer's services, should that lawyer be expected to defend the indigent without pay?

Until fairly recently, lawyers who were assigned to indigent cases worked for no pay, or pro bono. When government funds paid lawyers to defend the poor, the pay was low. Low pay sometimes resulted in poor representation, since attorneys willing to work for low pay usually had little experience. Some attorneys would take lots of cases and rush through the court process, unable to represent any of their clients well. In 1970 the Court held that the right to counsel meant the right to *effective* counsel, but the issue of what is effective is still unresolved.

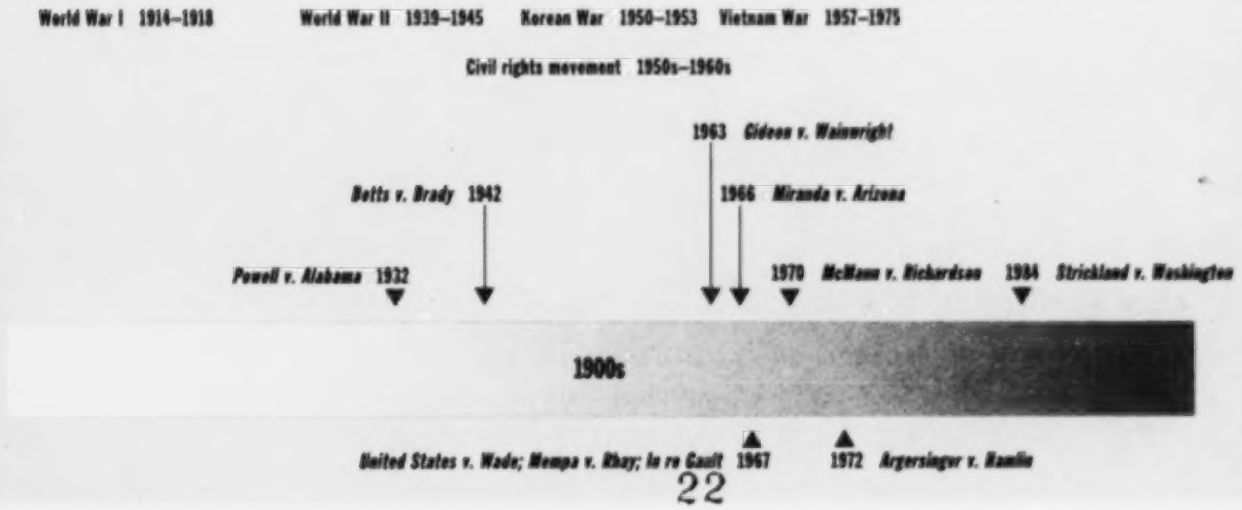
Public Defenders

Two main methods have been used to provide legal counsel to indigent criminal defendants: (1) assigned counsel, in which the judge appoints an attorney who is paid for handling that particular case; and (2) public defender systems, in which salaried lawyers devote all or most of their time to representing indigent criminal defendants. Less frequently used are contract defense systems in which a private attorney or law firm bids annually for a contract to represent indigent people.

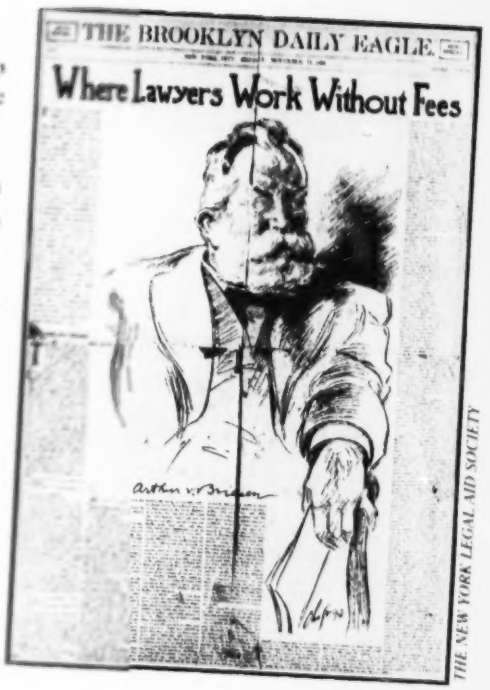
A public defender is paid by the government to defend someone accused of a crime who is too poor to hire a private lawyer. The idea of a public defender was conceived by Clara Shortridge Foltz in 1893. Foltz became the first female lawyer in the western states when she joined the California bar in 1878. She suggested that the government pay for the defense of all criminally accused.

The American Bar Association (ABA) and the National Legal Aid and Defender Association are among the organizations working to ensure that indigent criminal defendants are represented only by attorneys who are trained in criminal law and trial procedures, have the resources to call investigative and expert witnesses, and are paid sufficiently so that they have enough time to work on a case.

We cannot have equal justice until both defendants who can afford lawyers and those who cannot have effective legal counsel. Legal representation of our country's indigent people is not just a noble and worthwhile idea; it is also a constitutional guarantee. ◆


World War I 1914–1918
World War II 1939–1945
Korean War 1950–1953
Vietnam War 1957–1975
Civil rights movement 1950s–1960s
1963 Gideon v. Wainwright
Betts v. Brady 1942
1966 Miranda v. Arizona
Powell v. Alabama 1932
1970 McMann v. Richardson
1984 Strickland v. Washington
1900s
United States v. Wade; Kempa v. Khay; In re Gault 1967
1972 Argersinger v. Hamlin

Heroes of Indigent Defense


THE BROOKLYN DAILY EAGLE

Where Lawyers Work Without Fees

THE NEW YORK LEGAL AID SOCIETY

Our legal system now accepts that poor people accused of a crime who might serve time are guaranteed free legal representation. That acceptance was gained through the work of committed people, such as these.

• **Clara Shortridge Foltz** became the first female lawyer in the western states in 1878. Denied admission to Hastings College of Law, California, because of her gender, Foltz sued the college and won the right to attend. She declined to do so, however, because she had passed the California bar exam and was already practicing law. It was Foltz who first proposed that the state provide and pay for a public defender in all criminal cases. She is credited with creating the public defender model. After her death, she was awarded a law degree from Hastings in 1991.

• **Anthony Amsterdam** is Judge Edward Weinfeld Professor of Law and Director of the Lawyering Program at New York University School of Law. He is one of the foremost advocates and scholars in criminal law, criminal procedure, and civil rights. He has worked to see that both middle-class and poor people have legal representation equal to that of the wealthy.

• **Abe Fortas**, a distinguished lawyer and later an Associate Justice of the U.S. Supreme Court, was pro bono counsel in the landmark *Gideon v. Wainwright* decision that the states must provide a free attorney to any person accused of a felony who cannot afford one.

• **General Charles L. Decker** headed the National Defender Project for the National Legal Aid and Defender Association from 1964 to 1969. The National Defender Project was funded by the Ford Foundation. Through General Decker's unparalleled leadership, more uniform standards for defendant services were developed and implemented through pilot projects throughout the United States. Becoming permanent, the pilots served as models for many of today's defender programs.

• **Three heroes of legal aid**—A. von Briesen, C. E. Hughes, and H. Tweed—also made notable contributions to indigent defense. See page 11. ◆

Books on Indigent Defense

Gideon's Trumpet by Anthony Lewis relates the story of Clarence Earl Gideon, a poor, middle-aged Florida drifter, who in 1961 was accused of theft, a felony charge in Florida. Henry Fonda starred in a movie by the same title.

Scottsboro—A Tragedy of the American South by Dan T. Carter tells the story of the Scottsboro boys, nine African-American youths from Alabama who were accused of raping two white women in 1931. Eight were found guilty and sentenced to die. The ninth person's trial was declared a mistrial. The convictions were overturned by the U.S. Supreme Court in *Powell v. Alabama*. In 1977 the last living Scottsboro defendant, Clarence (Willie) Norris, was pardoned by Alabama governor George Wallace.

Notable American Women: A Biographical Dictionary by Edward T. James includes the story of Clara Shortridge Foltz.

Benchmark Indigent Defense Cases

These U.S. Supreme Court cases helped establish the right of poor people to have a lawyer's help when accused of a crime, if they might have to serve a jail sentence.

Powell v. Alabama, 287 U.S. 45 (1932). *Powell* was the first and most important case to extend the Bill of Rights to the states by applying the Fourteenth Amendment. In *Powell*, the U.S. Supreme Court overturned the convictions of indigent African-American youths who had been charged with raping two white women, found guilty, and sentenced to death.

The Court found the youths' trial to be gravely unjust. The ruling focused on the youths' lack of legal counsel in a capital case (one in which a person found guilty might be executed). Rather than refer to the Sixth Amendment right to counsel, the Court pointed out constitutional rights of due process in the Fifth Amendment that extend to defendants in state criminal courts through the Fourteenth Amendment. This ruling created a right to a lawyer for indigents facing capital charges in exceptional circumstances.

The Scottsboro boys, as the defendants were called, were retried and found guilty. On the second appeal, their convictions were reversed because of the exclusion of African-American jurors. The Court made an effort to make sure some jurors would be African-American. But at their third trials, the boys were convicted once more by all-white juries chosen from a racially mixed jury pool.

Betts v. Brady, 316 U.S. 455 (1942). While *Powell* created a right to counsel in state courts under exceptional circumstances, the Court in *Betts* defined "exceptional" only as facts and circumstances that offended commonly held ideas of fairness.

In *Betts*, the Court looked at Fifth Amendment due-process rights as the reason for assigning a lawyer, rather than the Sixth Amendment guarantee of counsel. Dissenters in *Betts* noted the double standard the ruling provided; greater constitutional protection was provided for defendants in federal courts than in state courts. Twenty-one years would pass before this inequity was challenged.

Gideon v. Wainwright, 372 U.S. 335 (1963). Clarence Earl Gideon was a poor, middle-aged drifter charged with theft, a felony offense in Florida. He was convicted and sentenced to prison. Having read many law books in prison, Gideon realized his Sixth Amendment right to legal counsel had not been met. He appealed his case and won.

In ruling for Gideon, the Court reversed its *Betts* decision. It now recognized that the due-process rights of the Fifth Amendment included the Sixth Amendment right to counsel.

Argersinger v. Hamlin, 407 U.S. 25 (1972). A decade after *Gideon*, the Court in *Argersinger* extended the right to counsel to misdemeanor cases that might result in a person found guilty serving time in prison.

Miranda v. Arizona, 384 U.S. 436 (1966). Ernesto Miranda was arrested at home and taken to a Phoenix police station. He was questioned by police and after two hours confessed to a crime. He was subsequently tried, convicted, and sentenced to prison.

Miranda did not have an attorney present when he signed his confession. The Court reasoned that it was difficult to tell whether the suspect waived his right to counsel and signed the confession willingly and knowingly. If he did not, then the confession should not have been used as evidence at trial.

Miranda showed the Court's concern that pretrial rights be extended to all accused people. These rights include (1) the right to remain silent; (2) the right to be told that any statement made may be used against the accused person; (3) the right to have an attorney present during questioning; and (4) the right to have an attorney appointed before questioning if the accused person wants a lawyer and cannot afford one.

In 1967 the Court extended the right to a lawyer back to the time of lineup in *United States v. Wade*, 388 U.S. 218, and forward to the time of sentencing in *Mempa v. Rhay*, 389 U.S. 129.

In re Gault, 387 U.S. 1 (1967). In this case, the Court recognized the special need for juveniles to have a lawyer in triallike court hearings. Gerald Gault was 15 years old when, after a number of court proceedings in which he had no counsel, he was sentenced to a juvenile correctional center for up to six years. Gault appealed. The Court ruled that as a juvenile, he had the same constitutional right to counsel as an adult.

McMann v. Richardson, 397 U.S. 759 (1970). In this case, the Court emphasized the right to *effective* legal assistance. The ruling was an attempt to improve the service that indigent defendants were receiving.

Strickland v. Washington, 466 U.S. 668 (1984). This ruling made it difficult to prove ineffective representation. The Court decided that only specific defects in a lawyer's work could show lack of counsel. ◆

Legal Services and American Cities

This article discusses both criminal and civil legal aid programs in New York and Chicago. Only federally funded programs are described in Atlanta, Cincinnati, and San Diego. These cities provide many other free legal services, including pro bono work.

New York

As one might expect, New York has the longest history and the most complicated system of legal aid programs. The organized delivery of legal services to the poor in New York City began in 1876 with the founding of the German Legal Aid Society, the first program of its kind in the nation. The society was established as a private nonprofit organization to aid the thousands of recently arrived German immigrants unfamiliar with the laws and customs of their new home. It was not long before the German Legal Aid Society became The Legal Aid Society serving all poor New Yorkers.

From the beginning the society provided both civil and criminal defense representation, but during the early years of its existence the society furnished legal assistance in relatively few criminal cases. A separate criminal branch did not come into being until 1910. During the following five years, the society gradually expanded its criminal defense services throughout the state and federal courts of criminal jurisdiction in New York. In 1963, the year *Gideon v. Wainwright* was decided by the United States Supreme Court, the Criminal Courts Branch of the society provided representation to indigent defendants in more than 57,000 cases, all with private funds.

Today, through its six operating units, The Legal Aid Society serves more than 300,000 clients annually. Under various agreements with the city, state, and federal governments, it is the primary defender in the state and federal court systems at the trial and appellate levels and as law guardian for children in the Family Court. The society also supplies civil legal representation through neighborhood offices in each borough of the city and a number of specialized units. That representation is funded by private philanthropy, largely from the private bar, and by the various other sources including the Legal Services Corporation, the Interest on Lawyers' Account Fund, state and local government grants, and United Way.

The criminal defense services the society provides are supplemented (primarily in cases involving conflicts) by private attorneys who are paid an hourly rate by the city of New York for providing such services. The Appellate Defender, Inc., picks up conflicts cases and the Neighborhood Defender Services helps out in Harlem.

The other major provider of civil legal services in New York City is Legal Services of New York, Inc., (LSNY), formerly known as Community Action for Legal Services (CALS). LSNY coordinates most of the Legal Services Corporation funding in New York City. It distributes money to eight delegate agencies (which operate neighborhood legal services programs throughout New York City) as well as to some of the programs of the Civil Division of The Legal Aid Society. LSNY also receives funding from the Interest on Lawyers' Account Fund, state and local government grants, and United Way, as well as some private funding.

The two main civil legal services programs, The Legal Aid Society and LSNY, also work with the private bar to increase the availability of civil legal services. The Volunteer Division and Civil Division of the society utilize the services of approximately 1,000 pro bono attorneys and paralegals. LSNY works closely with Volunteers of Legal Services (VOLS), which serves as an umbrella for volunteer efforts, and many of its delegate agencies undertake volunteer programs as well. Bar associations including the Association of the Bar of the City of New York, the New York County Lawyers' Association, the Brooklyn Bar Association, and the Queens Bar Association have pro bono projects.

Virtually all the law schools in New York City run clinical programs that assist in the provision of legal services and civil, juvenile, and criminal defense. In addition, many of the law students at these schools undertake pro bono work as well.

Chicago

In 1886 the Chicago Women's Club and other women's organizations formed the Protective Agency for Women and Children, in part, "to protect women and girls...in financial matters and redress wrongs and injustices." In its first year, the Agency handled 156 complaints, mostly wage claims. The Agency's work was the beginning of legal aid in Chicago, the second city in the nation (after New York) to recognize the needs of urban poor people and immigrants.

The Bureau of Justice, founded in 1888 by the Chicago Society for Ethical Culture, also worked to secure legal protection for men and women and to improve laws and the legal system. In 1905 the Bureau and the Protective Agency combined to form the Legal Aid Society of Chicago. But even as its caseload (both civil and

(Sources: Susan B. Lindenauer, The Legal Aid Society of New York; Annual Report of the Legal Services Corporation, *Fiscal Year 1977-1978;* Chicago Daily Law Bulletin, *September 22, 1986.)*

criminal) and its legislative activity increased, funding remained scarce. In 1919 the society became part of United Charities of Chicago and was renamed the Legal Aid Bureau. This alliance provided access to trained social workers as well as increased funding. The Bureau's caseload more than doubled in its first two years.

Eventually, the Illinois Department of Labor took over wage claims, and the Public Defender began to handle criminal cases. The Legal Aid Bureau was able to focus on civil work, continuing to handle suits for debt, bankruptcies, evictions, foreclosures, breaches of contract, and consumer issues. For many years the Bureau remained the major source of free legal aid in the city. Then in the 1960s, the federal government offered funding for legal assistance as part of its social programs. This funding led to the creation of the Legal Assistance Foundation of Chicago, which operates through a network of neighborhood offices.

Although the Legal Aid Bureau and the Legal Assistance Foundation are the largest providers of free legal services in Chicago, many other organizations offer some form of legal help to those who cannot afford to pay fees. Through organizations, such as Chicago Volunteer Legal Services and the Lawyers Committee for Civil Rights Under Law, volunteer attorneys and paralegals offer pro bono services.

Atlanta

When it was launched around the turn of the century, Atlanta's legal aid effort was the first of its kind in the South. Despite doing good work, the organization lost the interest of lawyers and eventually disappeared.

It was resurrected in 1924 by E. Smythe Gambrell, a young lawyer who had worked with the Harvard Legal Aid Bureau while a law student. Gambrell and other lawyers formed the Atlanta Legal Aid Society. The society's first legal counsel was Major J.L.R. Boyd.

Boyd believed the society should strive to change laws that hurt the poor. With this in mind, he launched a campaign to eliminate the loan sharks (moneylenders who charge a very high rate of interest) who preyed on poor people throughout the city. "Salary buyers," for example, provided $20 loans to borrowers when they signed away their upcoming $22 paychecks. On payday, the borrowers would have to give their paychecks to the lenders and so needed another loan to get through the week. This often continued for years.

Boyd publicized such abuses, organized lawyers to represent poor people against salary buyers, and prepared legislation that made it harder for loan sharks to operate.

During the 1940s and 1950s, demand for legal aid grew along with Atlanta itself. The Legal Aid Society's budget didn't grow nearly as quickly, totaling only $55,924 in 1964. The creation of the OEO Legal Services Program led to increased funding, however, and by 1972 the society's budget had risen to $1 million.

Cincinnati

A group of prominent citizens founded the Legal Aid Society of Cincinnati, the country's seventh such society, in 1907. The legal problems its clients faced—such as consumer issues, poor housing, and installment-buying abuses—were remarkably similar to those clients still face today. The society worked to limit lending abuses and persuaded the Ohio legislature to pass a bill taking aim at loan sharks.

The society believed that the legal system could not dispense justice unless it was open to everyone regardless of income. "Lawyers are morally obligated to give a portion of their services free to the poor for whom the Legal Aid Society exists," declared then-leader Walter Knight in 1912.

At the beginning of this century, the society began an intern program that gave law graduates work experience in a legal services office. In 1966 the society started airing a radio program on legal rights and responsibilities, which continues today.

For much of its history, the Cincinnati society was headed by Murray Seasongood. Seasongood became interested in legal services in 1903, while still a law student at Harvard. He earned national recognition in the early 1920s, when he led a political reform movement that defeated the leaders of Cincinnati. Seasongood himself was elected mayor. His support for legal services never wavered—he was still working on behalf of this cause when he was 100 years old.

San Diego

A soldier who died fighting for America during World War I was responsible for founding San Diego's legal aid movement. DeWitt Mitchell, who was 22 when he died in 1918, left $20,000 in trust to open the office of Public Attorney in the City of San Diego.

According to Mitchell's will, the public attorney should be a male who would work full time serving "persons who have saved a little money or other property, and who are in danger of losing it." According to the will, the public attorney could not handle criminal matters, divorces, or annulments.

This trust funded the Public Attorney's Office until 1953. That year, a Legal Aid Society was formed and received funds through other sources. A court ruled that because other money was available, the society could disregard Mitchell's rules against female lawyers, marital cases, and poor clients who did not save.

Today the society serves an area of 45,000 square miles. With LSC and IOLTA funding, by 1978 its budget rose to nearly $1 million. The society's clients include poor Hispanic, African, and Asian Americans. It also serves migrants and 17 Native American reservations. ◆

Student Handout

The American Bill of Rights

Judy Norris

To the Teacher

Together with the students, read and discuss the American Bill of Rights. Point out that the Bill of Rights is the first ten amendments to the Constitution of the United States. Ask students to identify which amendments are particularly applicable to criminal law. Emphasize that since the adoption of the Bill of Rights in 1791, the Supreme Court has used it as the basis for its decisions in many criminal cases. You may want to discuss these cases as you review specific amendments.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

STATEMENT OF MIRANDA RIGHTS

Since the Court ruling in *Miranda*, law officers must provide people they arrest with this basic information about their rights.

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to consult a lawyer and have a lawyer present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Use this page to help review your understanding of the American Bill of Rights and criminal law.

Select one of the choices given to complete each statement. Underline your answer.

1. The American Bill of Rights are the first ten amendments to the ___.
(Declaration of Independence, U.S. Constitution, Emancipation Proclamation)

2. The right to due process of the law is identified in the ___.
(Fifth Amendment, Sixth Amendment, Seventh Amendment)

3. The guarantee of a right to counsel is part of the ___.
(Fifth Amendment, Sixth Amendment, Seventh Amendment)

4. The Fifth Amendment guarantees your right to ___.
(have a jury trial, avoid proving yourself guilty, be served a search warrant)

5. The Eighth Amendment protects a person from ___.
(unreasonable searches, being tried for the same crime twice after being found not guilty, cruel and unusual punishments)

6. The Fourteenth Amendment extends to the states the due-process rights of the ___.
(Fifth Amendment, Sixth Amendment, Seventh Amendment)

7. The Sixth Amendment does not guarantee the right to ___.
(a speedy trial, reasonable bail, supporting witnesses)

8. The Fourth Amendment requires federal officers to have a warrant to ___.
(search a house, accuse someone of a crime, set bail)

The following items identify legal terms and criminal cases. Write the letter of the matching term or case next to each item.

____ 9. Law derived from judicial decisions that create precedents.

____ 10. Law passed by the legislature.

____ 11. The first case in which the right to counsel in felony cases was held to be binding on the state courts.

____ 12. This process enables a convicted person to ask a higher court to review his or her case.

____ 13. This case extends the right to counsel to pretrial stages of the judicial process.

____ 14. In this case, the right to counsel was determined to apply only in exceptional cases in which due-process rights were being denied.

____ 15. The first case to apply the right to counsel to state courts in a capital case.

____ 16. The special need for juveniles to have the protection of counsel was found in this case.

____ 17. In this case, the Court extended the right to counsel to all misdemeanor cases that might result in prison sentences.

____ 18. Rights that are of such fundamental importance as to require compliance with standards of fairness and justice.

____ 19. A crime of a serious nature, for example, murder or robbery.

____ 20. The constitutional right of a criminal defendant to have a court-appointed attorney if he or she is unable to pay for one.

a. case law
b. *Miranda v. Arizona*
c. *Powell v. Alabama*
d. *In re Gault*
e. due-process rights
f. *Betts v. Brady*
g. right to counsel
h. *Gideon v. Wainwright*
i. *Argersinger v. Hamlin*
j. statutory law
k. appeal
l. felony

Neuhard Smith Babcock Bamberger Lefstein Ehrlich Halter McCalpin Murray

Round Table

Frank Kopecky & Christopher Kopecky

The Round Table presents the opinions of nine professionals serving our legal and justice systems in various capacities. Their views have been expressed in response to specific questions about providing representation in criminal and civil matters to those unable to pay for lawyers.

Babcock

Barbara Allen Babcock is the Ernest W. McFarland Professor of Law at Stanford University in Stanford, California, and author of Western Women Lawyers, *chronicling the life of nineteenth-century lawyer Clara Shortridge Foltz. Ms. Babcock was U.S. Assistant Attorney General in charge of the Department of Justice Civil Division.*

• *Attorneys are provided to poor people in most criminal cases and legal aid is available for civil cases in many places. In your opinion, is the system of providing counsel adequate?*

Babcock: The system for providing counsel to poor people in civil cases could stand improvement in many places, of course. But the revitalization of legal aid and the pro bono efforts of law firms, law school clinics, and other types of legal fellowships and specialized law firms make the civil side much, much better than the criminal justice system in providing counsel to those unable to pay.

The provision of counsel for the indigent accused is a joke in many places, where defendants plead guilty to serious charges without anyone seriously considering the merits of their case or defense. The Sixth Amendment to the Constitution guarantees effective assistance of counsel, but it is a promise broken. The inadequate counsel problem is especially acute in death-penalty cases, for which there simply are not enough lawyers with the skill and resources to present the case for the defense.

People who see O. J. Simpson on trial may get some idea of what a rich person can afford for a defense. Everyone should realize that most people charged with double homicide do not have anything even resembling the legal thought and care that has gone into this defense.

The problem of the totally inadequate counsel who does not present the client's valid defenses will be even worse with the three-strike laws.

• *Do you believe lawyers as a group have a special obligation to provide counsel, and what do you believe is the best method for providing legal representation?*

Babcock: I think the best method for providing criminal defense services is through a mixed system of representation in which a strong, well-funded public defender who has a staff of investigators and social workers sets the pace and tone of representation, and aids the private bar, who take all the cases that the public defender cannot handle.

The main problem that public defenders face is that their funding never keeps pace with their caseload. There is no lobby for the indigent accused. The problem does not result in ineffective assistance, however, if there is some safety valve, such as the regular participation of the private bar in taking cases of all kinds that would otherwise overload the public defender.

• *Should the right to counsel that exists in criminal law be expanded into other areas of the law? Should special efforts be made to provide counsel for juveniles?*

Babcock: I have a hard time thinking about expanding the right to counsel when the criminal justice system is in such dire straits and great need. Ineffective assistance of counsel is the most serious problem facing the criminal justice system today.

• *One of the goals of the legal system is equal justice for all. What does the phrase mean to you in the context of the right to legal representation?*

Babcock: I do not think that equal justice for all can be achieved without adequate legal representation. Our essential notions of due process all turn on a meaningful opportunity to be heard. For that, the poor person, untrained in law and adversary presentation, needs counsel.

Frank Kopecky is professor of legal studies at Sangamon State University in Springfield, Illinois, and editor of the Illinois State Bar Association Law-Related Education Newsletter. *Christopher Kopecky, a recent graduate of the University of Wisconsin–Madison, is working as Professor Kopecky's paralegal.*

BEST COPY AVAILABLE

Bamberger

Clinton Bamberger was the first director of the OEO Office of Legal Services. He developed strong national support for legal services for the poor and promoted many policies governing legal aid programs. Officially "retired" today, Mr. Bamberger is assisting with clinical legal education work in Nepal, as well as pro bono work in South Africa and the Baltimore area. Among many distinctions for his dedication to the cause of equal justice, Mr. Bamberger received the ABA Litigation Section's John Minor Wisdom Public Interest Award.

• *Attorneys are provided to poor people in most criminal cases and legal aid is available for civil cases in many places. In your opinion, is the system of providing counsel adequate?*

Bamberger: No, in fact, I think it is almost shameful. There are only enough lawyers now to really help about 20 percent of the poor people in civil cases. Every day we read in the paper about cases in which people charged with crimes are poorly represented. The greatest shame is that the Congress often prohibits legal aid lawyers from helping poor people who fall into certain categories or prohibits them from doing certain things for these people. For example, disqualifications may include abortion cases, immigration proceedings, and welfare cases. The attorneys may also be prevented from raising constitutional issues in indigent cases. So it's as if we have two constitutions—one is free, and people have to pay for the second.

• *Currently criminal and civil representation is being provided to indigent persons through a variety of means. Would you describe any programs or approaches such as the use of paralegals or simplification of the process to allow for self-representation?*

Bamberger: Bar associations have committees that provide help. Most lawyers, and I mean particularly the hundreds of thousands of lawyers in small towns, in solo practice, and in small firms everywhere, do a lot of free work. Legal Aid and public-interest law firms do a lot, but not enough.

Paralegals could do much more if the lawyers would give up their control and restriction of paralegal work. With the cost of education through college and law school being so high, there will never be enough people fully trained as lawyers. Lawyers do many things that don't require special training and could be done by paralegals. I think that at the moment paralegals are restricted by lawyers who think that they might lose business.

Much more law and procedure should be "delawyered." Statutes and court papers should be written in simple language and ought to be easily available to people. There is much more we can do with computers and other technology. For instance, the Maricopa County Court [Phoenix, Arizona, is in Maricopa County] has designed a program that places a computer right in the courthouse. Many relatively simple procedures for which people are now required to pay lawyers' fees can be done very simply with this computer. There are lots of things we can do to make the law more accessible to people through technology.

• *Do you believe lawyers as a group have a special obligation to provide counsel, and what do you believe is the best method for providing legal representation?*

Bamberger: I think lawyers have a special obligation. In the United States and many other countries in the world, lawyers have very special privileges and skills. I think you cannot say that in order to get justice you have to hire a particular kind of person who must speak for you and then not make that person available. In a society such as ours that requires money to hire that special person, somehow the state should make that person available for those without money.

I think we can't afford to make a choice about what is best [pro bono programs, contracts with attorneys, public defender or legal services offices]. We need to do all of these things. If I were forced to choose, then I would choose public defenders and legal services offices. I make that choice because the law has become so complex, so specialized. I think the poor need lawyers who understand that law better, who are specialists in that law, and who have empathy with those clients.

• *Should the right to counsel that exists in criminal law be expanded into other areas of the law? Should special efforts be made to provide counsel for juveniles?*

Bamberger: Yes, I think it should be expanded. The advice and the advocacy of lawyers should not be available only to the rich and the powerful. The price of a lawyer's fee should not shut the courthouse door. It doesn't mean anything to say that anybody can come into the courthouse unless, in fact,

they can get justice. In our system you must have a lawyer to make your case before the court.

I think legal services should be provided to minors. If children are going to be affected by what the court does, then the judge should hear what the children have to say. Lawyers may be necessary for this. Often the perspective of the child sheds new light on the problem.

• *One of the goals of the legal system is equal justice for all. What does the phrase mean to you in the context of the right to legal representation?*

Bamberger: It means justice for all. It means that justice is equal for both the rich and the poor, the powerful and the weak, that everybody can have justice.

Lefstein

Norman Lefstein is Dean and Professor of Law at the Indiana University School of Law–Indianapolis. He has played leadership roles in the defender movement, with principal publications in the areas of criminal justice and professional responsibility. He was chair of the ABA Section of Criminal Justice and Reporter for the Second Edition of the ABA Criminal Justice Standards Relating to the Prosecution and Defense Functions, Providing Defense Services, and Pleas of Guilty. Currently, Dean Lefstein is chairman of the Indiana Public Defender Commission.

• *Attorneys are provided to poor people in most criminal cases and legal aid is available for civil cases in many places. In your opinion, is the system of providing counsel adequate?*

Lefstein: It is not adequate and sometimes it is absolutely terrible. I've been directly or indirectly involved with issues related to adequate defense counsel for most of my professional life, and I have continued to see the same problems over and over again, even though I suppose there are places where there have been significant improvement. It is an eternal struggle to provide adequate funding. There are some social problems that probably are not going to be aided by more money, but criminal defense services is not one of them. Adequate funding is essential to make the system work.

• *Currently criminal and civil representation is being provided to indigent persons through a variety of means. Would you describe any programs or approaches such as the use of paralegals or simplification of the process to allow for self-representation?*

Lefstein: There are a myriad of programs throughout the country, but I do not know that I am close enough to them these days to single out a particular program. I chair the Indiana Public Defender commission, which has had a very significant impact on death-penalty cases, and I think it suggests a model for use elsewhere. The commission provides compensation to counties for 50 percent of the cost of representation in death-penalty cases. In order to qualify for that money, the counties must appoint two lawyers and insure that the lawyers are adequately compensated, expert services are available, and lawyers have the requisite qualifications.

Paralegals are vital. Lawyers by themselves simply cannot operate effectively or efficiently. The paralegal plays a vital role in the collection of evidence, investigations, interviewing, and putting together materials. You could go on and on because you just can't do it without them.

In the criminal context, the complexity of criminal procedure and law is not something that the layperson can really deal with. There is really not much possibility of simplifying procedures to allow for self-representation.

• *Do you believe lawyers as a group have a special obligation to provide counsel, and what do you believe is the best method for providing legal representation?*

Lefstein: This is a difficult question in the criminal context. On the one hand, I believe, just like the Rules of Professional Conduct recognize, that lawyers should assume a pro bono responsibility to help the poor and be of service in other areas of public concern. The difficulty is when you talk about pro bono in the context of criminal cases. I always worry if it is suggested that lawyers have an obligation to work for free or for little charge when the state has a constitutional duty to provide adequate representation. The dimension of the problem is such that lawyers as a group cannot be expected to provide the representation on a pro bono basis. It will not get

done, and it will shortchange the accused and make a mockery of the Constitution.

It is the responsibility of government to provide adequate representation in criminal cases in much the same way as we provide judges, bailiffs, sheriffs, and police. As Chief Justice Burger said many years ago, the criminal justice system is like a three-legged stool requiring the judge, the prosecutor, and the defense lawyer. If any one of the those legs is not adequately supported, the stool does not stand.

I agree strongly with the standards of the American Bar Association, which recognize that there is no delivery-system model that should be used exclusively. I think it is a mistake to develop systems of public defense representation in which the private bar does not remain involved. It is important that the private bar remain involved both as a safety valve and as a group of lawyers who will be concerned with the administration of criminal justice.

• *Should the right to counsel that exists in criminal law be expanded into other areas of the law? Should special efforts be made to provide counsel for juveniles?*

Lefstein: I think you can certainly make a very strong case for expanding the right to counsel. There are some modest movements in that direction because, so often in other areas outside the criminal context, the right to defend meaningfully in the proceeding is dependent upon having a lawyer. Laypersons simply cannot do it effectively on their own. Therefore, I am sympathetic to the movement to expand the right to counsel. Because we haven't always done a perfect job in making counsel available in the criminal context, I worry about how well we will do it in other contexts.

• *One of the goals of the legal system is equal justice for all. What does the phrase mean to you in the context of the right to legal representation?*

Lefstein: In the criminal context, [the phrase means] having defense counsel who are capable of adequately representing the clients. That means they are sufficiently trained and compensated and have access to the kinds of support they need in order to meaningfully provide effective legal representation. The right to legal representation is more than simply having a warm body present.

... [It] is only by emptying yourself for others that you fill yourself with meaning. It is only by giving yourself away that you find yourself.

Professor Charles DiSalvo, West Virginia University College of Law 1994 Hooding Ceremony Address, Morgantown

... But even equality has its price. People don't just walk into court and plead their own case with any real chance to win. Especially not poor people. Most often, they haven't the faintest idea what their rights are. It used to be said that we had the best justice money can buy. The Legal Services Corp. is erasing that cynical stigma. We have the best justice—period.

St. Petersburg Times, March 8, 1981

Ehrlich

Thomas Ehrlich is a visiting professor at the Sanford Institute of Public Policy at Duke University in Durham, North Carolina. He is President Emeritus of Indiana University. Mr. Ehrlich was the first president of the Legal Services Corporation. He has authored or co-authored books and articles concerning equal justice for the poor.

• *Attorneys are provided to poor people in most criminal cases and legal aid is available for civil cases in many places. In your opinion, is the system of providing counsel adequate?*
Ehrlich: No. More support for civil legal help is needed both through federally supported and state-supported legal services offices and through voluntary efforts by lawyers. I think this is an important time for the Legal Services Corporation to reestablish the premise that civil legal help to poor people in this country is an important part of the total legal system, and that poor people should not be outside the legal system, which they are without effective legal help.

• *Currently criminal and civil representation is being provided to indigent persons through a variety of means. Would you describe any programs or approaches such as the use of paralegals or simplification of the process to allow for self-representation?*
Ehrlich: There are efforts in a number of states to expand the delivery of legal services, and these efforts should be encouraged. I cannot comment at this time concerning a model program.

I think paralegals can play an important role in the provision of legal help. In Legal Services Programs over the years, paralegals have been a key to the provision of effective help and under the supervision of lawyers can do a great deal on behalf of clients.

Also I have written about efforts to reform the legal system, to simplify the process, and to make it more user friendly. There are a number of steps that have been taken in the various arenas to simplify procedures and more are needed.

• *Do you believe lawyers as a group have a special obligation to provide counsel, and what do you believe is the best method for providing legal representation?*
Ehrlich: Lawyers have a monopoly on the provision of legal services, and with that monopoly comes a responsibility to give some of their time, energy, and effort to those who cannot afford legal services. While I think there is an underlying responsibility for federal and state governments to provide civil help as well as help to those accused of crimes, the bar has a supplementary and complementary responsibility to provide some of its services as well.

My experience suggests that a core of ongoing staff attorneys in a publicly funded agency is essential, but I think this can be supplemented through pro bono programs, contracts with private attorneys, and other arrangements.

• *Should the right to counsel that exists in criminal law be expanded into other areas of the law? Should special efforts be made to provide counsel for juveniles?*
Ehrlich: I think there should be a right to counsel in some civil areas, particularly when one is required to use the legal system. It seems only reasonable that the government provide some legal help. Exactly where the lines are drawn could be subject to debate, but I think representation is needed in many instances.

We view the legal system as an alternative to blood on the streets and we require people to use the legal system. If we are going to do this, then we must provide civil legal help as well as help for those accused of crimes. Additionally, there may be a special obligation to provide counsel for minors in juvenile court and in custody cases.

• *One of the goals of the legal system is equal justice for all. What does the phrase mean to you in the context of the right to legal representation?*
Ehrlich: It means some opportunity for all people not only to live within the law, but to be able to use it and the legal system when they need to.

Hatter

Terry J. Hatter, Jr., is the U.S. District Court Judge for the Central District of California in Los Angeles. Judge Hatter was a legal services lawyer, an assistant public defender in Chicago, and an assistant U.S. Attorney in Sacramento, California. He was Regional Legal Services Director for the OEO Legal Services Program in San Francisco, and he has held numerous posts addressing justice system and legal assistance issues.

• *Attorneys are provided to poor people in most criminal cases and legal aid is available for civil cases in many places. In your opinion, is the system of providing counsel adequate?*
Hatter: Clearly it is not on the civil side. What we need to do is provide more funding for the Legal Services Corporation. We need more funding at the state levels through bar associations, legislatures, or both. We need also to attempt to force Congress, when it passes laws, such as Title VII, that provide for attorney representation, to provide the funds so that attorney representation is made viable.

• *Currently criminal and civil representation is being provided to indigent persons through a variety of means. Would you describe any programs or approaches such as the use of paralegals or simplification of the process to allow for self-representation?*
Hatter: Both the Orange County and Los Angeles County Bar Associations are actively at work putting together projects to aid juveniles both in family court and juvenile court.

I'd like to see a greater role for paralegals and others who can provide assistance in administrative hearings, moving a lot of these matters out of the courts and into the administrative arena and also involving poor people more in Alternate Dispute Resolution (ADR). One of the things that concerns me about ADR is that it appears there is going to be a two-tier system of justice. Those who can afford to get out of the courts will use ADR and other types of private judging. The poorest will remain within the system, which will be poorly funded, and receive an even lesser level of justice than they do now.

I've never been opposed to simplifying some of the procedures. At the same time, I feel a certain amount of formality ought to be maintained in the court system, particularly in a society such as ours where there seems to be a lack of civility and a lack of respect for institutions and for the law generally.

• *Do you believe lawyers as a group have a special obligation to provide counsel, and what do you believe is the best method for providing legal representation?*
Hatter: The bar does have a special obligation, being trained in the law and using the law for its livelihood. As well, I believe that the general public bears a responsibility to maintain what many people believe is the fairest justice system in the world. There has to be involvement of the bar to a greater degree because of its relationship to the law, and the general public has an obligation to maintain a minimum standard of justice.

We have to have a combination of [pro bono programs, contracts with attorneys, and government programs] probably with the Legal Services Offices coordinating the efforts. I have always felt this way. There has to be this partnership arrangement. We need all of these component parts to insure proper representation.

• *Should the right to counsel that exists in criminal law be expanded into other areas of the law? Should special efforts be made to provide counsel for juveniles?*
Hatter: Yes, but who is going to fund this, who is going to make this possible?

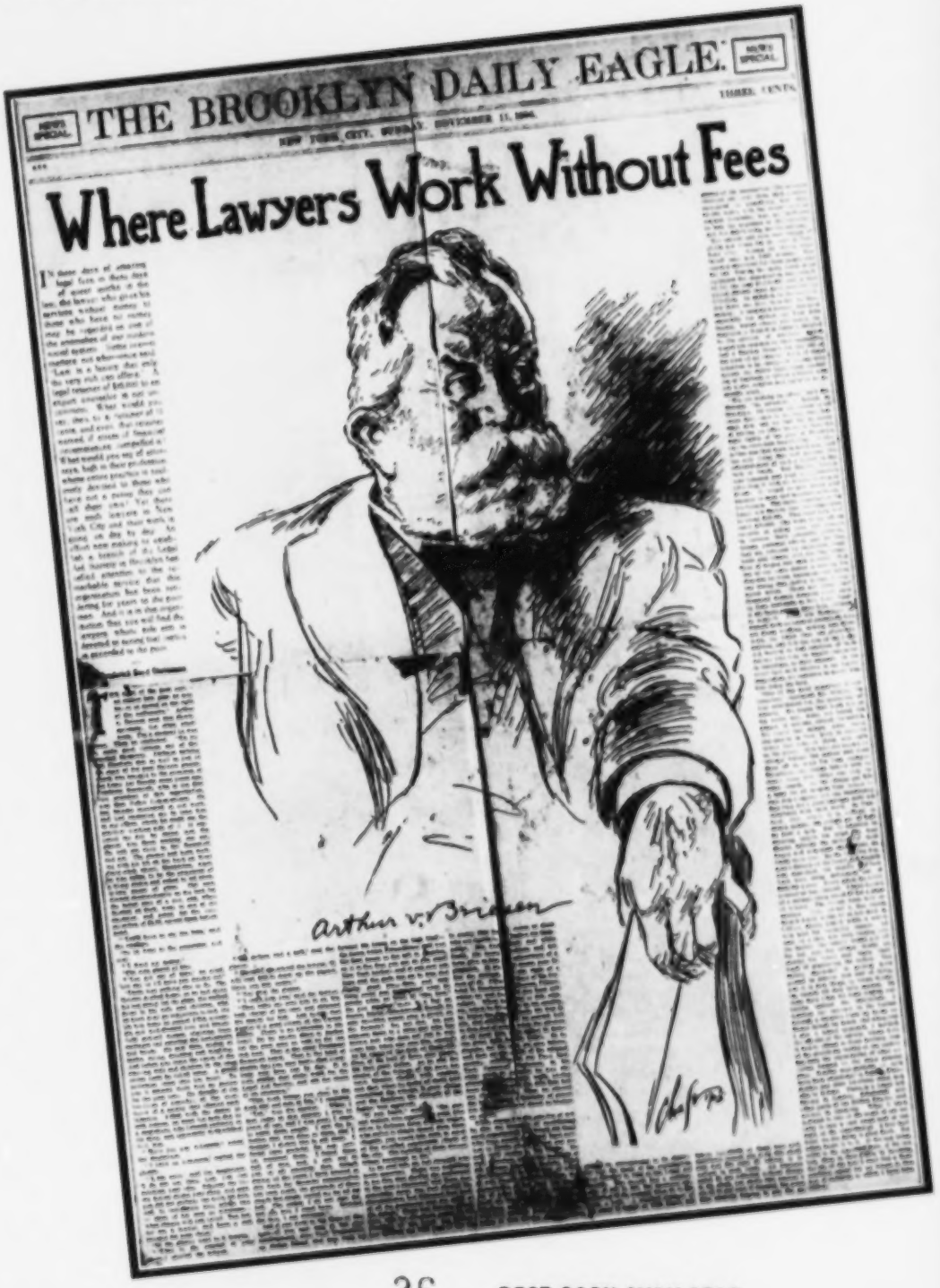
I sat as a juvenile court judge when I was on the superior court over fifteen years ago. In California, juveniles who cannot afford representation are provided representation through the public defender's office. But in the family court area minors often need to be represented. I don't know how that need is taken care of except through pro bono efforts on the part of the local bar associations.

• *One of the goals of the legal system is equal justice for all. What does the phrase mean to you in the context of the right to legal representation?*
Hatter: Given the present makeup of our legal system and its intricacies, it is impossible to have equal justice without equal representation. It is as simple as that.

ustice:

THE HISTORY OF THE NEW YORK LEGAL AID SOCIETY

by Susan B. Lindenauer
Counsel to the Executive Director of The Legal Aid Society of New York


THE BROOKLYN DAILY EAGLE.

Where Lawyers Work Without Fees

Presented by the Consortium for the National Equal Justice Library, the ABA Standing Committee on Legal Aid and Indigent Defendants, and the ABA Special Committee on Youth Education for Citizenship.

American Bar Association

BEST COPY AVAILABLE

...ty of New York

A look at the nation's first p... ...e to the poor

Founded in 1876, The Legal Aid Society of New York City, a private, nonprofit law firm, is the largest and oldest provider in this country of legal assistance to people too poor to pay for private counsel. Today, through its six operating units, the Civil Division, the Criminal Defense Division, the Criminal Appeals Bureau, the Federal Defender Division, the Juvenile Rights Division, and the Volunteer Division, the Society provides high-quality indigent defense, civil, and juvenile representation to approximately 300,000 people each year. With a staff of more than 2,000 full-time employees, of whom more than 1,100 are lawyers, it is the largest legal employer in metropolitan New York. The Society assists poor New Yorkers in courts of criminal, civil, and juvenile jurisdiction at the trial and appellate levels in both the state and federal court systems.

Beginnings

But let us go back to the beginning of this first organized provider of legal services. In 1876, when The Legal Aid Society was founded by a group of public-spirited merchants and lawyers, New York City had become home to tens of thousands of recently arrived immigrants who were often non-English speaking and unfamiliar with the laws and customs of their new home. To meet the needs of many of these new arrivals, The Legal Aid Society was established on March 8, 1876, as Der Deutsche-Rechtsschutz-Verein, the German Legal Aid Society, under the auspices of the German Society. In its first year of existence, the Society employed one lawyer who handled 212 cases.

The first attorney-in-chief of the Society was Charles K. Lexow, who served in that position from 1876 to 1887. Archibald R. Murray, the current attorney-in-chief, is the 15th attorney-in-chief. He is the first African American to head the Society's staff.

From its inception, the Society has been governed by energetic and principled boards of directors. The first president of the board of directors was Edward Salomon, who served in that capacity for 14 years. The second president of the Society's board, Arthur von Briesen, was elected in 1890. He was an extraordinary leader in the movement to secure free legal assistance for poor people. His presidency marked a turning point in the history of the Society. By this time, the Society had become self-sufficient; it no longer had to depend on the German Society for financial aid. As Mr. von Briesen assumed the presidency, the Society was receiving the financial and moral support of many prominent members of the bar. It was also serving the legal needs of hundreds of clients of many different nationalities. In 1896, in recognition of the fact that the Society was providing access to legal services for poor New Yorkers, whatever their origin, the Society changed its name to The Legal Aid Society.

President von Briesen also served as a national voice urging the establishment of similar legal aid societies elsewhere in the nation. Modeled after The Legal Aid Society in New York City, legal aid societies were created in Atlanta; Baltimore; Boston; Chicago; Cleveland; Cincinnati; Kansas City; Los Angeles; Newark; Philadelphia; Pittsburgh; Rochester, New York; San Francisco; St. Louis; and Westchester County, New York. Each was a separate private organization governed by its own local board.

Range of Services

Most of the legal matters handled by New York's Legal Aid Society in its earliest days were civil in nature—wage claims, property disputes, landlord-tenant matters, consumer and credit problems, family-law disputes, and the like. However, the founders of the Society clearly indicated that they anticipated

Funding for this booklet has been provided by the American Bar Association Fund for Justice and Education; we are grateful for their support. The booklet is published with the Fall 1994 issue of *Update on Law-Related Education* magazine, which is part of the American Bar Association Special Committee on Youth Education for Citizenship UPDATE PLUS program.
The articles, lesson plans, and other instructional materials in UPDATE PLUS are designed to help classroom teachers and law-related education program developers educate students about the law and legal issues. A one-year subscription to UPDATE PLUS costs $25. For subscription and back issue information, contact American Bar Association YEFC, 541 N. Fairbanks Court, Chicago, IL 60611-3314; (312) 988-5735. FOR CUSTOMER SERVICE CALL (312) 988-5522.
The views expressed in this document are those of the author and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association, the Fund for Justice and Education, or the Special Committee on Youth Education for Citizenship.
All rights reserved. Printed in the United States of America.
ISSN 0147-8648 PC #738-0100-1803

Photos courtesy of The New York Legal Aid Society

Susan B. Lindenauer is Counsel to the Executive Director of The Legal Aid Society of New York; member, New York State Bar Association House of Delegates, and officer, Criminal Justice Section; former chair, Committee on Legal Assistance of the Association of Bar of City of New York and former chair, Committee on Legal Aid of New York State Bar Association; recipient, New York County Lawyers' Association Award for Outstanding Public Service; President, Columbia University Law School Association, member, Columbia University School of Law, Board of Visitors, and cochair, Committee on Public Interest and Pro Bono.

that the Society would assist poor people who faced criminal charges as well. From the outset the Society handled criminal matters, but because of its limited resources it provided legal assistance in a relatively small number of criminal cases. But it did maintain a presence in the criminal justice system. For example, in 1896, the year the Society changed its corporate name to The Legal Aid Society, the annual report of Society activity describes the case of two boys, named Williamson and Donovan, who had been convicted of robbery and sent to a reformatory. The mother of one of the boys sought assistance for them, stating that a witness in the initial trial had committed perjury. The Society obtained a new trial for the boys, who were then acquitted of the charges. During the same year, President von Briesen urged the assignment of Legal Aid lawyers for duty in the Police Magistrate's Courts "to prevent miscarriages of justice by reason of the summary methods ... employed there."

Expansion

In 1899 the Society expanded its services by opening three branches. The Seamen's Branch was set up to aid poor sailors, who were often of foreign origin and who were taken advantage of by unscrupulous persons who would kidnap many sailors from the dock areas and force them to work on board ships for little or no pay. With the help of the Society, these activities came to a halt, and kidnapping and forcing sailors to work on board ships against their will became a federal crime. The Society also opened a branch on the Lower East Side of Manhattan—the Tenth Ward. This branch first served immigrants coming from southern and eastern Europe; later its clients were largely Jewish immigrants from central and eastern Europe.

During the first decade of the twentieth century, the Society opened branches in Harlem and Brooklyn. In 1910 the Society also formally established its criminal branch by opening an office to serve clients facing criminal charges in a police court, the Essex Market Court, on the Lower East Side of Manhattan. The Society chose to provide ongoing indigent defense representation in this court because of the extreme poverty of the inhabitants of the area. By 1911 the Society was also providing occasional representation in other state and federal courts of criminal jurisdiction.

"Rockefeller Lawyers"

During World War I, a group of lawyers established the Volunteer Defenders Committee to provide representation to indigent persons facing felony charges in the Court of General Sessions in Manhattan. This project was funded initially by John D. Rockefeller, Jr., with two foundations, the Carnegie Foundation and the Commonwealth Fund, also providing substantial support. The attorneys who worked with the Committee were known as "Rockefeller lawyers," and there was great demand for their services.

By 1920 the Volunteer Defender Committee, while retaining its identity as a Society committee, had merged with the Society to become part of the Criminal Branch. Throughout the 1920s and 1930s, the Society expanded its criminal defense services. By the close of the 1930s, the Volunteer Defender Committee had ceased to exist. Organized criminal-defense services were provided solely by the Criminal Courts Branch of the Society. During the mid-1940s, the Society was assisting more than 7,500 indigent defendants annually. In 1947 the Society established a separate unit, the Youth Counseling Bureau, to provide legal assistance to young people charged with criminal activity. It also organized a panel of volunteer lawyers to provide representation in criminal appeals. In 1949 the Criminal Courts Branch of the Society opened an office in the United States Courthouse to provide representation in the United States District Court of New York and in the United States Court of Appeals for the Second Circuit.

In the same year, the Criminal Courts Branch of the Society opened an office in Brooklyn to provide representation in felonies, and two years later an office was added in the Bronx. In 1963, the year *Gideon v. Wainwright*, 372 U.S. 336, was decided by the United States Supreme Court, the Criminal Courts Branch of the Society provided representation to indigent defendants in more than 57,000 cases.

Government Funding of Defense

Until 1965 the indigent defense services provided by the Society were privately funded. Recognizing the Society's long and significant history of providing representation to poor people in New York City, in 1965 the city of New York designated the Society as the primary defender of the poor in criminal matters. Since then, funding for the Society's indigent defense representation in the state courts has come from governments—principally from the city of New York with some supplementation from the state of New York.

At the trial level, indigent defense representation is provided in the state courts by the Criminal Defense Division. Today the Criminal Defense Division is the largest defender office in the country. It represents approximately 70 percent of the criminal defendants in New York City at the trial stage. In addition, the division's law reform unit undertakes impact litigation to address systemic abuses. For example, in *People ex rel.*

continued on page 6

in the History of The Legal Aid Society

All in Time

The time frame on these pages identifies milestones in the history of The Legal Aid Society of New York. Review the time frame to identify how the Society has changed its services over the years, how it has influenced the development of other legal aid societies, and how the Society has been influenced by outside contributors and events.

You Decide

You are an administrator with The Legal Aid Society. Two people come to you asking for services. One needs help in a civil dispute with a landlord; the other needs assistance to prevent deportation. The Society's caseload is heavy, so it can handle only one additional case. In a small group, make lists of the details of each case. Then discuss which case you will take and determine how you might help the other individual. You might want to use the information on landlord and tenant disputes in the magazine, *Update on Law-Related Education*, Fall 1994.

1876

Der Deutsche-Rechtsschutz-[illegible] is incorporated by [illegible] of the German [illegible] free [illegible]

1890

Turning point in the history of the Society: Arthur von Briesen, a prominent attorney, is elected president. At the beginning of the year, the Society has 81 members contributing to its support. By the end of the year, the number has grown to 170 and, for the first time in its 14 years of existence, the Society is self-sufficient and does not depend on the German Society for support. By this time, it is the German Legal Aid Society in name only. Many prominent members of the bar become members, and the Society is serving hundreds of immigrants who are not of German descent. Among the 4,878 cases handled that year: returning a child wrongfully taken from its mother, obtaining a separation for a woman deserted by her husband, and defending an innocent man accused of the commission of a crime. However, most of the cases handled involve nonpayment of wages to poor working people.

1896

The Society changes its name to The Legal Aid Society.

1899

The Society opens its first three branches: the Seamen's Branch, which succeeds in wiping out activities of crimps and in making the kidnapping of sailors a federal offense; the East Side Branch; and the Woman's Branch. (The Woman's Branch is closed in 1902, and an uptown branch at 741 Tenth Avenue is established.) The East Side Branch, which has served immigrants from southern and eastern European countries, now serves a largely Jewish population (88 percent of the clients) who live in the old Tenth Ward of the city.

BEST COPY AVAILABLE

On the Local Scene

Investigate legal services available in your community. You might research the history of the organizations involved as well as the services they provide today. You might wish to contact the organizations, ask for informational brochures, and request an interview. For your interview, you might ask questions such as: Who founded the organization? How has the organization grown? Does it provide help in both civil and criminal services? How many people does the organization serve each year? Does the organization accept all cases, or does it follow any guidelines for accepting cases? If it follows guidelines, what are they?

Early 1900s

The Society opens a Harlem Branch in 1905; a Brooklyn Branch in 1907 (closes in 1909 because of a lack of funds, but reopens in 1910); and the beginnings of a Criminal Branch in 1910 when the Society assigns a lawyer to the Essex Market Police Court.

1911

First National Convention of Legal Aid Societies of America is held in Pittsburgh. Modeled after The Legal Aid Society in New York City, legal aid societies had started in Newark, Boston, Philadelphia, Chicago, Cleveland, Pittsburgh, Rochester (N.Y.), Westchester County (N.Y.), Los Angeles, Kansas City, Cincinnati, St. Louis, Atlanta, San Francisco, and Baltimore.

1917

During World War I, a Volunteer Defenders Committee is organized to represent indigents in felony cases in general sessions in New York County. This effort is underwritten by John D. Rockefeller, Jr., and the attorneys are known as Rockefeller lawyers. In 1920 the committee merges with the Society to become the Criminal Branch. By 1939 a complete merger with the committee takes place, and the Criminal Branch becomes the Criminal Courts Branch of The Legal Aid Society.

1949

The Criminal Courts Branch opens an office in the U.S. Courthouse to provide representation in the district court and in the court of appeals. Again, John D. Rockefeller, Jr., makes the project possible with a generous contribution.

1960s

After the landmark Gideon v. Wainwright decision, the Society is designated as the primary defender in New York City to represent indigents in state and federal courts. The Appeals Bureau argues eight criminal cases before the United States Supreme Court in the 1960s.

The Juvenile Rights Division is established in 1962, concurrently with the creation of the new family court in New York State. It is one of the first organizations to represent children in a juvenile court. The Society provides representation to children accused of the commission of a crime five years before that representation is mandated by the United States Supreme Court in In re Gault. Civil Legal Services are expanded to Queens, Staten Island, and the Bronx with funding through the Office of Economic Opportunity. In 1969 the Civil Appeals Bureau is established.

BEST COPY AVAILAB

Maxian v. Brown, 570 N.E. 2d 223 N.Y. (1991), the highest court in New York State, the Court of Appeals, determined that defendants could not generally be held more than 24 hours between the time of their arrest and the time they are first brought before a judge to be arraigned on the criminal charges.

In the state court system, representation in criminal appeals is provided by the Criminal Appeals Bureau. The bureau has played an important role in shaping the criminal law and procedure of New York State and of the nation. Since the 1960s, the bureau has argued 35 cases in the United States Supreme Court, winning 20 of them. The Prisoners' Rights Project, a specialized unit in the bureau, is a leading advocate of constitutional and humane conditions of confinement in the city and state correctional system. The bureau's Parole Revocation Defense Unit, the first in the nation, provides representation and consultation for parolees charged with violations of the conditions of their parole. The Society's Federal Defender Division provides indigent defense representation in the United States District Courts for the Eastern and Southern Districts of New York as well as the Second Circuit Court of Appeals.

Juvenile Representation

The Juvenile Rights Division of the Society was established in 1962 when the Family Court of the State of New York was created. The legislation that created the family court also provided for counsel for children appearing before that court. Thus, the Society was providing representation to children accused of the commission of a crime five years before the United States Supreme Court in *In re Gault*, 387 U.S. 1 (1967), mandated that representation. Today the Juvenile Rights Division provides representation to children in delinquency and designated felony proceedings; child protective proceedings (abuse and neglect); status proceedings (persons in need of supervision); and proceedings involving extension of placement, foster care review, and termination of parental rights. The Juvenile Rights Division has developed a multidisciplinary approach, utilizing lawyer-social worker teams to provide representation to their young clients. While asserting their clients' due-process rights in cases such as *In re Winship*, 397 U.S. 358 (1970), a case brought by the division and decided by the United States Supreme Court (proof beyond a reasonable doubt required in delinquency cases), the division has also been in the forefront of developing case law in the dispositional area. This work has resulted in the rehabilitative purposes of the dispositional phases of cases involving juveniles being given due recognition. In addition to its trial and appellate representation, the Juvenile Rights Division also has a Special Litigation Unit that undertakes law reform efforts focused on systemic problems in the child welfare and juvenile justice systems.

Civil Assistance

From its inception in 1876, the Society has provided civil legal services to the poor in New York City. In the 1960s with federal funding from the Office of Economic Opportunity, the Civil Division was able to open additional offices in Queens, in the Bronx, and on Staten Island.

Today the work of the Civil Division covers a wide range of pressing issues confronting poor people—housing, benefits, family law, immigration, consumer rights, health law, disability, and the problems of the elderly. The division has neighborhood offices in every borough of New York City. Along with neighborhood offices, the division also has specialized units, including the Homeless Family Rights Project; the Civil Appeals and Law Reform Unit; and units addressing immigration issues, family law problems, and problems of the elderly.

In the landmark decision *McCain v. Koch*, 70 N.Y. 2d 109 (1987), in the New York Court of Appeals, the Homeless Rights Project established a basic right to shelter that meets basic standards of habitability. In addition, the Civil Division has also mounted an effort to prevent homelessness by preventing evictions and securing public assistance benefits to enable clients to retain their housing and feed and clothe their families.

The Society also provides civil legal assistance through its Volunteer Division with a full-time staff of experienced attorneys who provide assistance and supervision to nearly 1,000 volunteers from private law firms and corporate law departments in the handling of pro bono cases. The range of cases covered includes housing, benefits, disability, consumer issues, immigration, family law, and AIDS-related legal assistance.

The Civil and Volunteer Divisions provide direct representation to more than 40,000 individuals and families each year. Thousands of additional poor families, senior citizens, and disabled persons benefit from the division's law reform litigation.

Leadership Role

Throughout its almost 120 years of existence, The Legal Aid Society has maintained a national leadership role in providing legal services for the poor. Its full range of services makes it unique in the legal services community. It is the only organization that in one year handles more than 200,000 indigent criminal cases and serves as law guardian to more than 56,000 children, while at the same time representing more than 40,000 individuals, families, and groups in civil matters.

Throughout its history, the Society has drawn its voluntary leadership from the major New York City law firms. From Charles Evans Hughes of Hughes, Hubbard, and Reed to Alexander D. Forger at Milbank, Tweed, Hadley, and McCloy, presidents have come from almost every major firm.

As New York governor Mario Cuomo said when he was presented with the Society's "Servant of Justice" award:

> The Legal Aid Society represents the best our profession has to offer—the very best—in intelligence, rigor and above all, the commitment to use whatever skills one has to serve a cause larger than one's self. A commitment enacted willingly and often at great personal cost. A commitment to make justice flourish here in the occasionally rugged streets of this great city and state. ◆

Center for Law and Education
955 Massachusetts Avenue
Cambridge, MA 02139

617/876-6611 FAX 876-0203

A grantee of the Legal Services Corporation (below), the Center for Law and Education (CLE) "takes a leadership role in improving the quality of public education for low-income students throughout the nation and to enable low-income communities to address their own public education problems effectively." CLE's activities include providing advice and collaboration on cases, publications, training, federal program advocacy, litigation, and assisting parent and student involvement in education. Some of the many school-related concerns CLE addresses are the educational rights of children with disabilities, the federal Chapter 1 program, vocational education, and school-to-work programs.

Children's Defense Fund
25 E Street, NW
Washington, DC 20001

202/628-8787 FAX 662-3540

Created in 1973, the Children's Defense Fund (CDF) is a nonprofit organization supported by foundations, corporations, and individuals. CDF's goal is "to educate the nation about the needs of children and encourage preventive investment in children before they get sick, drop out of school, suffer family breakdown, or get into trouble." CDF activities include public education, research, technical assistance, policy development, and national legislation, with particular attention to the needs of poor children and families. CDF will issue a major report on the costs of child poverty in late 1994.

Legal Services Corporation
750 1st Street, NE, 11th Floor
Washington, DC 20002-4250

202/336-8800 FAX 336-8959

An independent, nonprofit corporation established by Congress in 1974, Legal Services Corporation (LSC) has a mission "to ensure equal justice for people living in poverty through the provision of high-quality legal representation and to further the ends of justice and improve the lives of poor people through the rule of law." This mission is accomplished primarily through funding and oversight of various grantee programs that provide direct services. (Two of the grantees are included in this list.) In 1993, LSC programs helped over 1.5 million individuals and families solve legal problems through advice and referral, brief services, dispute resolution, negotiation and settlement, and litigation. The majority of cases involve family issues, such as custody and protection from family violence, income maintenance for families and the elderly, consumer finance, housing, and juvenile matters.

National Center for Youth Law
114 Sansome Street, Suite 900
San Francisco, CA 94104

415/543-3307 FAX 956-9024

A grantee of the Legal Services Corporation, the National Center for Youth Law (NCYL) has a mission to improve the lives of children living in poverty and to use the law to protect children from the harms poverty causes. NCYL's services include free expert legal advice on youth law matters to legal services attorneys and child advocates; publications, such as the journal *Youth Law News;* and litigation on laws and public policies to improve the conditions in which poor children live—e.g., *Sullivan v. Zebley*, 493 U.S. 521 (1990), to entitle poor, disabled children to receive monthly Supplemental Security Income benefits.

National Clearinghouse for Legal Services
205 W. Monroe, 2nd Floor
Chicago, IL 60606

312/263-3830 FAX 263-3846

Serving as the central repository of national poverty law documents, as well as a disseminator of information to advocates for low-income clients, the National Clearinghouse for Legal Services, Inc., (NCLS) is the communication hub for the legal services community. NCLS services are available to advocates working in legal services programs funded by the Legal Services Corporation and to others working on behalf of low-income people. The NCLS Poverty Law Library, established in 1967, currently houses more than 51,000 cases and publications. Its documents are retrievable at no or low cost through the Legal Records Department. *Clearinghouse Review*, the premier publication of the legal issues affecting low-income people, is sent free to each attorney and paralegal practicing in a legal services program funded by LSC.

National Legal Aid & Defender Association
1625 K Street, NW, Suite 800
Washington, DC 20006-1604

202/452-0620 FAX 872-1031

As a private, nonprofit national-membership organization for local organizations, programs, and individuals that provide civil legal aid and criminal defense services to the poor, the National Legal Aid & Defender Association (NLADA) has two goals: to see that all America's poor people can get legal help when they need it in both civil and criminal proceedings and to ensure that this help is equal in quality to that provided to paying clients. Founded in 1911 by members of the private bar and 15 legal aid offices, NLADA provides training for professionals serving the poor and files amicus briefs at appellate levels on poverty law and indigent defense cases of national importance. NLADA publishes the *Directory of Legal Aid and Defender Offices in the United States and Territories*, a listing of general civil or criminal organizations, whether or not they are members of NLADA.

BEST COPY AVAILABLE

American Bar Association
541 N. Fairbanks Court
Chicago, IL 60611-3314

SPECIAL COMMITTEE ON
Youth Education for Citizenship
AMERICAN BAR ASSOCIATION

Topics Discussed in the Video

In its history,
The Legal Aid Society of New York

- ✔ Serves immigrants initially, then all indigents
- ✔ Provides assistance in civil law, criminal law, juvenile law
- ✔ Expands in neighborhoods throughout the city
- ✔ Is model for indigent legal services in other cities
- ✔ Has support of major law firms and philanthropists
- ✔ Argues cases in state courts and federal courts

As long as supplies last, copies of the videotape *Equal Justice: The History of The Legal Aid Society* are available through the Office of the Director of Public Information of The Legal Aid Society, 15 Park Row, New York, NY 10038.

BEST COPY AVAILABLE

McCalpin

F. Wm. McCalpin is a retired partner with Lewis, Rice & Fingersh in St. Louis. He was chair of the ABA Select Committee on the Availability of Legal Services, which was an early effort to muster ABA support for the OEO Office of Legal Services. He has played many leadership roles in improving the delivery of legal services to the poor, including chairing the Legal Services Corporation (LSC) board of directors, which replaced the Office of Legal Services. He is currently a Legal Services Corporation board member. He has been awarded the ABA Medal for distinguished service to the cause of American jurisprudence.

• *Attorneys are provided to poor people in most criminal cases and legal aid is available for civil cases in many places. In your opinion, is the system of providing counsel adequate?*

McCalpin: No. The system is grossly underfunded. The caseloads are horrendous. In death-penalty cases, the resources provided are totally inadequate. The defense does not have the investigatory resources or the access to resources that are available to the prosecution through the police departments.

• *Currently criminal and civil representation is being provided to indigent persons through a variety of means. Would you describe any programs or approaches such as the use of paralegals or simplification of the process to allow for self-representation?*

McCalpin: Most of the states and the federal government have either public-defender or compensated private-attorney systems on the criminal side. I believe that they work imperfectly, but at least some sort of system everywhere in the country now to provide counsel for indigent persons.

I think it is clear that paralegals will play an increasingly important role in the provision of legal services. We are moving slowly in the direction of paralegals providing services independent of lawyers. In some Legal Service Programs, paralegals appear for clients in some administrative proceedings. As you may know, the ABA is undertaking a study on nonlawyer practice in the United States, and it is finding that such practice is far more extensive than has generally been appreciated.

Additionally, many Legal Services Programs are holding pro se clinics teaching people to represent themselves. Many legal procedures are too complicated even for lawyers; and if they can be simplified so that persons can represent themselves more adequately, they ought to be. Many more persons are representing themselves. In some states many of the domestic-relation matters are pro se.

• *Do you believe lawyers as a group have a special obligation to provide counsel, and what do you believe is the best method for providing legal representation?*

McCalpin: It is perfectly clear to me that the legal profession by itself cannot bear the whole burden of providing representation. There are not enough lawyers, and the burden is too great. It is true that in many areas lawyers have to be the service providers, but that does not mean they have to provide the services at the cost of impoverishing themselves. It has to be a coordinated effort of the community with lawyers at the forefront making some contribution.

There is no best way to provide legal representation. It will take a combination of paid staff lawyers, lawyers working on contract, and pro bono activities to begin to meet the challenge of providing adequate representation.

• *Should the right to counsel that exists in criminal law be expanded into other areas of the law? Should special efforts be made to provide counsel for juveniles?*

McCalpin: Yes, but I do not think it should be expanded on a constitutional basis. To the extent that we are going to expand representation, it ought to be by legislation so that the various pros and cons can be thrashed out. I think it is something that has to be worked out in the political process and not mandated by constitutional fiat.

With regard to juveniles, I think that access to counsel depends upon whether the minor is the subject of the action, as is likely to be the case in a juvenile matter in which representation is needed. In divorce or custody cases, I am not certain minors need to be represented separately from the parents. The *In re Gault* case requires representation in juvenile delinquency cases and this representation is important.

• *One of the goals of the legal system is equal justice for all. What does the phrase mean to you in the context of the right to legal representation?*

McCalpin: It's a combination of two things. It means everybody has access to the legal system; and when people are involved with the system, everybody is treated objectively, fairly, and equally without regard to race, wealth, or social status. I think it's equal access plus equal treatment within the system.

Murray

Archibald R. Murray is Executive Director and Attorney-in-Chief of The Legal Aid Society in New York City, and he was the first commissioner of the Division of Criminal Justice Services. He has been active in both civil legal services and criminal indigent defense. Mr. Murray is the immediate past-president of the New York State Bar Association. His contributions to the legal system in New York City, his dedication to public interest, and his commitment to the rights of the poor have been recognized by various organizations and bar associations, including the Fordham Law Alumni Association Medal of Achievement.

• *Attorneys are provided to poor people in most criminal cases and legal aid is available for civil cases in many places. In your opinion, is the system of providing counsel adequate?*

Murray: In some jurisdictions, but by no means all, there are reasonably adequate systems for providing counsel to indigent criminal defendants. I am unaware of any jurisdiction of significant size that can be said to have a satisfactory system for meeting the civil legal needs of the poor.

• *Currently criminal and civil representation is being provided to indigent persons through a variety of means. Would you describe any programs or approaches such as the use of paralegals or simplification of the process to allow for self-representation?*

Murray: Paralegals who have been properly trained to perform particular tasks can be effective instruments for extending the lawyer's capacity to serve clients. These tasks may involve real-estate transactions, some aspects of matrimonials, and certain administrative hearings, as well as litigation support of various types.

Where the procedure can be simplified without damaging the relative rights of the parties and the parties are reasonably matched, it would not be inappropriate to proceed without counsel. If one side engages counsel, the other will also need counsel. This effort at simplification deserves closer examination and evaluation.

• *Do you believe lawyers as a group have a special obligation to provide counsel, and what do you believe is the best method for providing legal representation?*

Murray: Lawyers as a group do not have an obligation to guarantee the adequacy of representation. However, because of their standing as an independent profession and their exclusive right to practice law, lawyers have a duty to assist in making legal services available to those who need service but cannot pay. Lawyers also have a duty to act competently and to encourage high standards.

Since the provision of criminal defense to the indigent is a government responsibility, private resources should not be diverted to meet this government obligation. Whatever resources, governmental or nongovernmental, that can be brought together should be channeled to the provision of civil legal services—an area in which there is no constitutionally mandated right to assistance of counsel.

• *Should the right to counsel that exists in criminal law be expanded into other areas of the law? Should special efforts be made to provide counsel for juveniles?*

Murray: Yes. There are circumstances in which the claim can be every bit as critical to the party as his or her liberty. Loss of one's home or deprivation of significant government benefits that are needed for survival are but two such examples.

Yes [there should be special efforts to provide counsel for minors]. New York now provides counsel to minors in many of these cases. For more than five years before *In re Gault* was decided, New York, by statute, provided representation at government expense for children who were charged with delinquency, were alleged to be in need of supervision, or were the subject of child protective hearings.

• *One of the goals of the legal system is equal justice for all. What does the phrase mean to you in the context of the right to legal representation?*

Murray: Equal justice as it relates to legal representation requires provision of counsel in criminal cases in which the defendant is unable to afford counsel. In civil cases it requires provision of counsel if the party has a serious, reasonable claim or defense that requires the assistance of a lawyer for effective presentation, and the party is unable to afford or otherwise secure the assistance of a lawyer. The bar should resist the temptation to "ration justice" in these cases.

Neuhard

James R. Neuhard is director, State Appellate Defender Office in Detroit, Michigan. A leader in justice system reform efforts, he is past president of the National Legal Aid and Defender Association and Chair of the ABA Special Committee on Funding the Justice System. The latter is charged with the highest priority of the ABA to investigate and attack the systemwide crisis in funding for all aspects of the justice system—civil and criminal. Mr. Neuhard is past president and current secretary of the Criminal Defense Attorneys of Michigan.

• *Attorneys are provided to poor people in most criminal cases and legal aid is available for civil cases in many places. In your opinion, is the system of providing counsel adequate?*
Neuhard: No, now do you have a year? [In brief, there is not adequate funding to assure assigned counsel a reasonable fee for the work they are doing]. A reasonable fee would pay the lawyers overhead and a modest sum on top of that. Separately the lawyers' expenses—costs for expert witnesses, travel expenses, and other out-of-pocket expenses—should be covered.

On the defenders' side, the most important goal should be realistic caseloads. Secondarily, there should be parity with prosecutors in terms of salary, which very few defenders have.

The two together [caseload and low salary] are cancerous in terms of their impact on the quality of representation. Finally, the support services ought to be there. Right now the scales are almost totally tipped, unless you are a well-funded defender program.

• *Currently criminal and civil representation is being provided to indigent persons through a variety of means. Would you describe any programs or approaches such as the use of paralegals or simplification of the process to allow for self-representation?*
Neuhard: [Given a choice between pro bono efforts and publicly funded attorneys] I fundamentally and profoundly oppose pro bono efforts when it is a Sixth Amendment mandate of the state to provide counsel.

I think the word *paralegal* hasn't as yet come to an accepted meaning. It is one of those terms that in the minds of people has its own meaning. If you mean a trained support person who has the ability to provide virtually any aspect of what a lawyer does other than going into the court, I think that use of paralegals is growing tremendously. We will probably be, at some point, certifying a nonlawyer subclass who can provide many, if not all, of the services lawyers can provide. There is no reason for that not to occur over time.

There are an enormous number of situations in which people would be just as happy to represent themselves if they thought they could do a decent job. I believe that you should have access to counsel if you want it. But I think even if counsel were available, many people would choose to do it themselves if they felt they could do it as well or better.

• *Do you believe lawyers as a group have a special obligation to provide counsel, and what do you believe is the best method for providing legal representation?*
Neuhard: The bar, as long as it has a monopoly, the exclusive right to provide representation in this area, has responsibility in terms of insuring that the lawyers are carrying out their mandated tasks professionally, both in the civil area and the criminal area. But that doesn't translate to say that the bar then must provide services free of charge. We continue with this concept that somehow lawyers who do this work should be paid below the market rate or forego pay entirely. No other licensed professionals who provide services to the state provide similar pro bono work. They get paid at the market rate. So why is it that the bar has to be paid at some artificially low rate? What it breeds is exactly what we see— turnover, inexperience, lack of resources, poor representation, and a complete cynicism on the part of the people who are receiving the services because they know what they are getting.

I believe in a mixed system [of meeting legal needs]. There ought to be a healthy mixed system with the private bar and a public defender or a not-for-profit corporation providing the services. Contracts can also be used, provided the attorneys are competent. A variety of mechanisms should be used—because [they are] more flexible, more adaptable, and more responsive to changing caseloads, emergencies, and short funding—provided the understanding is that a reasonable fee is paid to the private lawyer and that reasonable caseloads exist for the defender.

• *Should the right to counsel that exists in criminal law be expanded into other areas of the law? Should special efforts be made to provide counsel for juveniles?*
Neuhard: Of course [counsel should be expanded]. In the criminal area we almost have universal coverage. The Court has said time and again in the criminal area that the constitu-

tional rights possessed by a person aren't meaningful without the Sixth Amendment right to counsel, and I think that is also true in the civil area. The time has come to recognize that our society runs very much on access to courts. And the time has come to recognize that it is a fundamental right to have counsel in order for access to the courts to have any meaning at all.

The rights of a juvenile are no more or less important than the rights of any other citizen. What confounds this fact, obviously, is that minors have a parent or a guardian [legally] responsible for them who also has the power to make decisions on their behalf. If we give a lawyer to the parent and a lawyer to the child, we create a very interesting situation. But even though children have fewer rights, they have no less right to be counseled on what their rights are. All the parties should be counseled on what their rights are, even if in some situations, the guardian has the right to overrule a minor's decision.

• *One of the goals of the legal system is equal justice for all. What does the phrase mean to you in the context of the right to legal representation?*

Neuhard: Four aspects come to mind immediately when I think of equal justice for all. The first is just simply access to a court, access to a meaningful dispute-resolution process that leaves people feeling they received a fair hearing. Two, people want to perceive that the judgment that they are receiving is fair, learned, and reflective. Third is the quality of the process itself. People want a process that is public and treats everyone the same. Fourth is access to competent counsel, not just a warm body, but a lawyer who is skilled, competent, and not overburdened.

Smith

Wm. Reece Smith, Jr., is a partner at Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P. A., in Tampa, Florida. As president of the American Bar Association, he spearheaded the nation's commitment to providing free civil legal services to poor persons and was instrumental in the creation of the ABA Private Bar Involvement project, which became the ABA Center for Pro Bono. He led "the march on Washington" of legal profession leaders on behalf of the Legal Services Corporation in the 1980s. Mr. Smith is a recipient of the ABA Pro Bono Publico Award and the ABA Medal for distinguished service to the cause of American jurisprudence.

• *Attorneys are provided to poor people in most criminal cases and legal aid is available for civil cases in many places. In your opinion, is the system of providing counsel adequate?*

Smith: I think the system is not only adequate, but excellent. I think the funding for the system is not adequate. More money is needed both in the criminal justice area for public defenders and in the civil area for the Legal Services Corporation. Bar association programs as well could use additional funding. The system is effective, although I am certain there is plenty of room for improvement. For example, we need more private lawyers actively committed to and involved in the pro bono movement.

• *Currently criminal and civil representation is being provided to indigent persons through a variety of means. Would you describe any programs or approaches such as the use of paralegals or simplification of the process to allow for self-representation?*

Smith: There are any number of provisions whereby state governments and the public and private sectors provide counsel. For example, in the criminal justice area in the state of Florida, there is some governmental funding for the representation of persons on death row. By the same token, there is not enough funding to meet all the needs that exist, and accordingly the voluntary bar, without compensation, also

seeks to meet those needs. To address the civil legal needs of the poor, there are the federally funded civil legal services programs conducted through the auspices of the Legal Services Corporation on the one hand and the tremendous pro bono effort by the private bar on the other. Nationwide in the last ten years, the voluntary programs have gone from 50 in number to about 950.

I think paralegals can be used effectively in many ways to insure representation. There was a time, twenty years ago, when some of the professional poverty lawyers were very much opposed to the use of paralegals because they perceived it as providing second-class justice for the poor. I think experience has prompted us to modify our views in that regard, and we all recognize now that there are a variety of areas where paralegals can serve effectively.

I think it is fine to simplify, but that has long been suggested and hasn't been terribly efficacious. There is now a good deal of emphasis being put through the auspices of the bar association on self-help. I think to a certain extent those developments are desirable. They can only go so far, however, before expertise inevitably is needed.

• *Do you believe lawyers as a group have a special obligation to provide counsel, and what do you believe is the best method for providing legal representation?*

Smith: I regard justice as not just lawyers' business, but everybody's business, and accordingly I think a certain amount of each tax dollar should be addressed to providing representation for persons who need legal services and can't afford them. Substantial monies are provided in most states for public defenders in the criminal justice area. In the civil area, there are a great many lawyers involved in the pro bono movement. At least one estimate suggests that a third of the private practitioners in this country are providing civil legal services voluntarily without compensation. I don't know of any other business or profession that can make an equal claim. I think the legal profession does have a special obligation because we have a responsibility to insure that the legal system works appropriately. As professional persons we are committed to the concept of service—making our services available to all in need of legal services regardless of ability to pay. That does not mean that the legal profession alone should bear the responsibility of providing adequate representation.

By far the best way to insure representation is through the combination of public and private efforts that exists in this country today. There will never be enough tax money to meet all the legal needs, so those needs must be supplemented through the voluntary efforts of the private bar. I think the two working together is by far the most effective way to approach the matter and to provide the world's best system of legal assistance for the poor.

• *Should the right to counsel that exists in criminal law be expanded into other areas of the law? Should special efforts be made to provide counsel for juveniles?*

Smith: If *expanded* means providing lawyers at government expense, then I think that our nation cannot afford nor is it realistic for us to expect that every person who is in need of legal services in this country and is unable to pay for them will be provided all of those services at government expense. I just think that is not going to happen regardless of how desirable it is. The best way to meet the specific legal needs of the poor is to combine governmental funding and the voluntary, uncompensated efforts of the private bar as we do now. We should expand both government funding for civil legal assistance and volunteer work. I don't think we can hope for the kind of pervasive funding in the civil area that exists in the criminal area.

There should be special efforts to expand representation for minors, and special efforts are being made. There are any number of guardian *ad litem* programs conducted by bar associations throughout the country. Representation of persons who can't afford lawyers in divorce and child-custody cases is equally important and is one of the biggest problems that we face. The federally funded programs don't have the resources to meet all of the needs in the area of domestic relations. The private bar seeks to supplement the efforts of the federally funded programs, but this is one of the most challenging areas.

• *One of the goals of the legal system is equal justice for all. What does the phrase mean to you in the context of the right to legal representation?*

Smith: Equal justice for all is a national ideal; it appears on the facade of the Supreme Court building. It is a goal to which our nation and the legal profession should aspire. It means we should seek to make our nation's political system and legal system work so that each citizen is able to enjoy the full measure of his or her rights.

Photo credits: p. 31 IU Instructional Support Services, p. 32 ABAJ/Jim Ciccaro, p. 36 ABAJ/Dennis Osborne

Vignettes

. . . from lives devoted to serving the poor

In a world where most people want to earn top dollar in the marketplace, some legal professionals seek other rewards. Here's a look at just a few of the hundreds of thousands of attorneys who represent the poor all around our nation. The pay is low, much is done for free, and the media aren't interested. But what a story of service these attorneys have to tell!

The man in his 30s was not known for violence—he had quit his job as a New York police officer because he did not like to carry a gun.

After he left the Police Department, he became a sanitation worker, living from paycheck to paycheck. He had no savings, no bank account—no assets. He became addicted to illegal drugs. One night, he argued with a crack user who routinely threatened others and stole to support his own drug habit.

During the scuffle, the crack addict was stabbed to death. The former police officer was charged with manslaughter.

"I thought that my client was defending himself in the fight," says his public defender Daniel J. O'Donnell. "He was in a bad place at a bad time, doing things that put him at risk. But he was not somebody who deserved to go to prison."

The man spent eight or nine months in jail awaiting trial. The jury took less than an hour to acquit him. He collapsed when he heard the verdict.

"He walked out into the arms of his daughter and mother, returned to work, and has not been in trouble since," says O'Donnell.

Monica Whitaker and Mary Feely are free-lance editors in Chicago.

Daniel J. O'Donnell

In a world of cops-and-robbers action, murders, and drugs, Daniel J. O'Donnell is content to stick to the paper trail.

O'Donnell, a public defender with The Legal Aid Society in Brooklyn, New York, deals with routine felonies—car theft, large-volume drug sales, murder—on a daily basis.

"I use my four years of college and three years of law school to help desperate people that our society has disinherited," says O'Donnell. "By the time they get to me and to the criminal justice system, the schools, welfare—everything else has failed them.

"When I was a kid, I saw that lawyers had power. The Watergate era impressed me. I remember the [lawyers] cross-examining people from the White House," people who ran the country. With patience and hundreds of hours of document research, those lawyers held the powerful accountable.

"So today I spend my time fighting for people who have done horrible things, sometimes because of misjudgment, many times because of drugs," says O'Donnell.

"This work sucks the blood out of your veins. But I help explain how my clients got where they are. Sometimes they are savable."

The lawyer says he shied away from schoolwork and dismissed the legal field in general until 1984, when he worked on Gary Hart's presidential campaign.

"Everyone in the campaign whose job I wanted was a lawyer," he recalls.

Today, with seven years of service under his belt, O'Donnell stresses that he has never been a straight-A student and encourages others who may not have good grades to stick to their goals.

"Clients have told me that I'm the first person who ever fought for and believed in them. What I do is a noble thing. It couldn't be more noble."

Daniel J. O'Donnell is a senior staff attorney with The Legal Aid Society in New York City. He is assigned to the Brooklyn Office of the Criminal Defense Division.

by Monica Whitaker and Mary Feely

Tina Shanahan

The woman sunken against the sheets of her hospital bed is troubled and dying. AIDS has ravaged her body. Her four children, each fathered by a different man, have nowhere to go. The eldest has run away from home.

"It's sad to see her in the last stages of the disease," says law student Tina Shanahan, an intern at the clinical law office handling the woman's case and the custody of her children. "It's pretty challenging going to the hospital and not being able to tell whether she's coherent enough to sign documents."

Shanahan, who is working toward a joint law degree and master's degree in social work, deals primarily with troubled families and many clients affected by HIV at the University of Maryland Law School in Baltimore.

Once a childhood development specialist, Shanahan says she decided to pursue public interest law after becoming frustrated with problems in the classroom.

Most of the children with problems in school were suffering from "system problems," she explains. "It wasn't something we could fix."

Now, after just one year in law school, Shanahan says she is excited at the prospect of working to help others with her legal knowledge. She encourages other students, whether already in law school or interested in attending, to perform public service.

"While it is important to be a good student if you want to go to law school, you also need to do things that are productive, and have so many different types of experiences," she points out.

"Get to know people in the legal community so they can see that you care about your clients. Law schools are looking for caring people—they are impressed by students who have done lots of public service work, such as internships."

Tina Shanahan is enrolled in the Clinical Law Program at the University of Maryland School of Law in Baltimore.

Doug Robinson

It was a grisly tale for the headlines. An elderly El Paso couple were found bound and hacked to death with a machete in what apparently began as a burglary.

The police fingered 29-year-old Frederico Macias, a poor member of an ethnic minority. He was tried, convicted of murder, and sentenced to die.

"A lot of people have the knee-jerk reaction that the people on death row are guilty and deserve what they got," says Doug Robinson, who took on Macias's case as a volunteer in 1988. He and his law-firm colleagues spent five years and thousands of hours researching the case.

ABAJIAN BERG

When 67-year-old Lenore returned home after cancer surgery, she found an empty mailbox. Her Social Security check, her sole source of income, had been lost or stolen.

Because she could not pay her rent, Lenore was locked out of the room in the New York residential hotel where she had lived for 20 years. She found shelter in a friend's room but could get no help from either her landlord or the Social Security Administration.

She called the local legal services office. A lawyer informed her landlord that the lockout was illegal and would result in legal action. The landlord immediately allowed Lenore to return home.

The lawyer got the Social Security Administration to trace Lenore's missing check and provide emergency assistance in the meantime. This allowed Lenore to buy food and pay her rent.

BEST COPY AVAILABLE

On the basis of what they learned, the Washington lawyer convinced the federal courts to reverse the conviction by proving that Macias's original trial lawyer was ineffective.

The original lawyer had overlooked an alibi witness who could vouch for Macias's whereabouts at the time of the murder, and witnesses who could refute the testimony of a nine-year-old girl who said she saw the defendant with blood on his shirt and hands on the day of the crime. Macias's constitutional right to a fair trial had been violated.

Robinson, who began the case as a volunteer with the American Bar Association's death-penalty project, says his experiences only deepened his resolve against capital punishment.

"This is an issue that defines who we are as a civilization," he says. "... I'm convinced that the death penalty goes disproportionately to minorities and people of little means. The more I've been into it, the more I've seen that the system of justice is just not precise. There's too much opportunity for error, and with the death penalty, it's an error that can't be corrected."

Douglas G. Robinson is a partner at Skadden, Arps, Slate, Meagher, & Flom in Washington, D.C. He received a 1994 ABA Pro Bono Publico Award for his work on this and other cases.

Ed Kelaher

As chairman of a ministry to help the poor, Ed Kelaher sees himself as more than a lawyer running a free legal clinic.

Every day, Kelaher is ambassador, counselor, and friend to many of the "invisible people" behind the scenes of Myrtle Beach, S.C. His clients are the workers who clear trash from the beaches before dawn, bus tables, and change sheets in the hotels.

"Most people who can't afford to go to a lawyer, go to one only with their most pressing needs. I get people in jail without any real justice, victims of insurance frauds and civil-rights violations," says Kelaher.

The Surfside Beach, S.C., lawyer has helped his partner, Gene Connell, battle local authorities and employers. Recently they settled a class-action lawsuit against the state of South Carolina for wrongfully taxing the pensions of more than 61,000 people. After five years of legal dueling and two U.S. Supreme Court appearances, the complainants settled for $100 million.

Despite their firm's newfound reputation as the David that slew the state Goliath, Kelaher says he plans to stick to day-to-day advising and legal services. For the poor and underprivileged, it is a rare chance for the law to make a good impression.

"If you're willing to deal with the basic working person who makes money for food, you have the opportunity to be part of something real," he says. "... When you reach out and touch people's lives, it comes back to you."

Edward T. Kelaher is a partner at Kelaher & Connell in Surfside Beach, S.C. He was the recipient of a 1993 ABA Pro Bono Publico Award.

When Edward T. Kelaher walked through the South Carolina court, a judge told him a man facing drug and murder charges needed a lawyer.

"I went to see the man in jail, expecting a scar-faced monster who deals drugs and kills people," says Kelaher. "Instead, a small, scared man who was shivering under a blanket came to the glass window.

"He was crying, pleading for me to help him, and thanking me for coming."

Kelaher learned that his client was suffering from AIDS and had two or three months to live. Because of the client's illness, other prisoners were beating him.

"He was not a murderer," says Kelaher. "He was doing lookout work for drug dealers so that he could get the drugs that made him feel better."

Kelaher and the prosecutor explained the client's situation to the judge, who ordered his transfer to a hospital. He was later discharged and died soon afterward.

"That was one time when something in the criminal court system turned around and the compassion and humanity of the law came through," says Kelaher.

Barbara Baxter

When Barbara Baxter graduated from the West Virginia University College of Law in 1982, she wasn't planning a career of public service.

She joined a large law firm, where she was one of several lawyers appointed by the state supreme court to represent prisoners in a maximum security prison.

"The prison dated back to the Civil War and was horrifying," Baxter says. "It wasn't safe for guards and it wasn't safe for prisoners."

Baxter and her colleagues eventually convinced the West Virginia Supreme Court that such conditions were unconstitutional. The court ordered the prison closed, and a new 1,250-bed facility is now under construction.

While working on that case, Baxter realized she enjoyed public service. She left the law firm, set up her own practice, and five years ago joined West Virginia Legal Services Plan, Inc.

Today she represents people living in five rural counties of Appalachia.

"I think I am making a difference in what I do," she says. "Maybe not as big a difference as someone like Martin Luther King, but I am making justice work for people. That's a good feeling."

Many of Baxter's clients are women who have been abused. She helps them obtain domestic-violence orders, which are protective orders in West Virginia, and represents them if they seek divorce.

She also represents people who have been refused Supplemental Security Income (SSI), a welfare program for poor people who are physically or mentally disabled. Baxter's clients, many of them veterans or homeless people, often suffer psychiatric disabilities.

"This region has one of the lowest SSI approval rates in the country," she says. "Most people who apply get turned down. One of my clients had been in a psychiatric institution for a year and still was turned down."

Almost every appeal Baxter has filed has ended in victory for her client.

West Virginia Legal Services Plan, Inc., handles a wide variety of cases on such topics as welfare and housing. Recently, the agency filed a lawsuit demanding greater enforcement of child-support orders.

"We have a lot of work," Baxter says. "In fact, we turn away two out of three people who are financially qualified to receive our services."

Having to turn away clients is one of the frustrations of the job for Baxter, along with the low pay.

Her greatest satisfaction comes from knowing she has helped her clients.

"It's not like people come back and thank you," she explains. "I don't expect them to. But I represented a homeless man who was sleeping under a bridge. I helped him get $446 a month in SSI, so now he can afford a place to live and food to eat. That makes me feel good."

Barbara Baxter is a staff attorney with West Virginia Legal Services Plan, Inc., in Wheeling and president of the West Virginia State Bar. She is the state bar's first female president.

Married at the age of 16, Roberta was abused by her husband during most of their marriage. During her third pregnancy, she suffered a miscarriage as a result of a beating.

She obtained a court protective order (telling her husband to stay away from her), but the police did not enforce it. When Roberta left her husband, he broke into her new home and stabbed her.

She then tried to obtain a new protective order, but the court gave her a support order by mistake. The police refused to help when Roberta's husband broke into her home and beat her.

Roberta contacted the South Brooklyn Legal Services Office. Her lawyer helped her get a divorce, arranged for her to move to a new apartment, and obtained moving expenses from the Welfare Department.

Today, Roberta has graduated from college and runs a hotline for battered women.

BEST COPY AVAILABLE

BEST COPY AVAILABLE

Luis Galvan

Born in Mexico and raised on the Southeast Side of Chicago in a steel-mill district that is largely Hispanic, Luis Galvan didn't have to go far to find people in need of legal assistance.

"The biggest thrill you have in this job is to be able to have an impact on someone's life," says Galvan, an attorney with the Federal Defender Program.

Galvan's ties to his community and "concern about the rights of people in a legal setting" spurred him to complete a law degree at DePaul University. After graduation from the university's law school, he began work with the Defender Program and a free legal clinic that operates in a local church one evening a week.

As a federal defender, Galvan represents his clients through every stage of the legal process. He will represent a client at initial hearings, through a trial, and in appeals—all the way to the U.S. Supreme Court if need be.

On a typical day, he spends the morning and part of the afternoon in court. He visits clients in jail and usually has time in the afternoon to write legal motions. Overcoming clients' problems becomes a personal challenge, he says. Many bring disappointments, but the few bright spots seem to make it all worthwhile.

"About 40 percent of this job is social work," Galvan says. "We have to get people into alcohol and drug programs and develop sentencing alternatives."

Because the workload is reasonable and because he may spend years representing a client, Galvan often develops a close rapport with clients and their families.

"We try to address the social ills that caused our clients to come through the federal justice system. By and large, we can do a good job for the people who are willing to accept our advice and get the counseling and other services they need.

"We have a lot of failures, but we also have a lot of success stories. It's great to have people call you years later and tell you how well they're doing."

Luis Galvan is the supervisor of the Federal Defender Program in Chicago.

Distraught after an argument with his wife, the Chicago man phoned a bank. He said he had a bomb and was going to rob the bank.

When he arrived at the bank, Federal Bureau of Investigation agents were waiting. He gave himself up and was arrested.

"He wasn't intending to rob the bank," explains his public defender Luis Galvan. "He wanted to get arrested because his wife had thrown him out and he had nowhere else to go."

Because of those circumstances, the man received a shorter sentence than usual for bank robbery. He entered a drug detoxification program while in prison.

"He keeps in contact," says Galvan. "He's working, he's overcome his drug habit, and he's doing real well."

Claudia Smith

Each year, forced from their homes by poverty and a lack of work in Mexico and Central America, thousands of indigenous workers cross the American border looking for jobs in the California orchards.

Instead of opportunity, they find farmers trying to cheat them out of wages, cities passing ordinances against them, and smatterings of hate crimes that increase with the harvest season.

Many of the migrants from Central America are fleeing civil war. They speak pre-Columbian languages and are wary of outsiders. Recent Mexican migrants also are indigenous people. This means they face many cultural and linguistic barriers in this country.

"These people are marginalized and vulnerable," says Claudia Smith, a lawyer with California Rural Legal Assistance, which offers free legal representation to the migrant workers. Smith was born in Guatemala and moved to the United States to attend George Washington University. Her legal studies at the University of San Diego, she says, were simply a means to an end.

"I don't particularly enjoy being a lawyer. To me, the law is just a tool. I wanted to work with farm workers, and being a lawyer was an effective way to do it."

In the past, Smith and her colleagues have battled cities trying to ban sidewalk hiring of workers by employers who pay their workers less than minimum wage. They have pressured law-enforcement officers to investigate and prosecute hate crimes.

"We have dramas played out all day, " Smith says. "Just to see the courage of my clients in the face of all odds, I'm in awe of their strength of character and their strength all around."

Claudia E. Smith is regional counsel with California Rural Legal Assistance, Oceanside Office.

James Bell

EDUCATION WEEK

Justice, according to James Bell, requires "inhuman vigilance."

He should know. As a staff attorney at the Youth Law Center in San Francisco, Bell tracks public policies across the nation that affect people under 18.

"Right now caning is an issue," he says. "Several pieces of legislation being discussed in California would introduce caning in courtrooms. And if one legislature discusses caning, everyone wants to do it." Bell is dismissive of such measures, which he says make people feel better but do not to address the root causes of crime.

"We say that this isn't right, and we talk about the implications of such policies," he explains. "We hope to get some judgment into the picture, to slow people down and to open up dialogue."

Bell's clients are poor, under the age of 18, and living in government care or custody. He attributes hardening attitudes against young people, including young offenders, to a "low-level terror."

"Jobs pay $5 an hour, but it takes $10 to live," he says. "Government can't provide the things people need for a decent life, and no one knows what to do about that. That creates desperation and policies like 'three strikes you're out.'

"Our response to a social problem is not to deal with it, but to criminalize it. We have more people locked up in this country than any other country in the world, and nobody feels safer." Bell says a frustration of his job is that "you never win."

"You win something, and somebody goes and finds a loophole," he says. "You think you've solved something, and three years later you start from scratch. Even when you win, you don't win."

Bell is proud of his many legal challenges to the practice of holding children in adult jails, which he calls "abhorrent." Another source of pride was an invitation to South Africa, extended by the African National Congress, to advise the country on juvenile justice law. "That was the highlight of my professional career," says Bell, who will return to South Africa next year.

James Bell is a staff attorney at the Youth Law Center in San Francisco. He received the ABA Juvenile Justice Committee Award in 1994.

Almost 100 families lived in a trailer park in Soledad, California. Most of the residents were poor farm workers.

Floods were frequent at the trailer park. Because there was no barrier between the trailer park and a nearby freeway, cars could run off the road and into the trailers. The trailer park had no playground, and its garbage collection was unsanitary. Yet rents were rising by about 30 percent a year.

California Rural Legal Assistance filed a complaint on behalf of the residents, claiming the trailer park violated health and safety codes. The landlord was forbidden to raise rents until the case was settled.

The farm workers were anxious to slow the rent increases. The landlord rejected a rent-control proposal. The tenants then turned to the Rural Community Assistance Corporation, which helped them obtain grants and loans.

The residents used the money to buy the trailer park, renovate it, and run it as a cooperative.

BEST COPY AVAILABLE

Teaching Strategy

You Be the Judge

Joseph L. Daly

Background

Definitions of justice are elusive. This teaching strategy introduces students to two legal philosophies involving the concept of justice: the Traditionalist Western view based on Greek philosophy and the more recent Critical Legal Studies (CLS) view.

Besides showing students how to distinguish between these two views, this strategy will help them discover how attorneys might prepare to argue before each type of judge and what impact there might be on the verdict if the defendant, in this case a homeless person, does not have access to legal representation.

Objectives

1. Contrast the Traditional Western and Critical Legal Studies philosophies of law
2. Consider whether universal concepts of "justice" and "natural law" exist, and how justice might be embedded in law
3. Prepare legal arguments based on Traditionalist and CLS judicial philosophies
4. Evaluate the impact of legal representation on a verdict
5. Determine the significance of the philosophies judges might hold

Joseph L. Daly is a professor of law at Hamline University Law School in St. Paul, Minnesota. The teaching strategy is adapted from his writings, "Justice and Judges," Brigham Young University Law Review 2 (1988): 363, and "You Be the Judge: Apply Your Concept of Justice to This Difficult Case" (Hamline University, 1994).

Target Group: Students in grades 10–12
Time Needed: 4–5 class periods
Materials Needed: Student Handouts 1 and 2 for each student; courtroom props

Procedures

1. Assign the class to read Student Handout 1 and be prepared to discuss the questions in the ending paragraph.
2. Debrief after students have read Handout 1.
   a. Ask for volunteers to try to answer the questions at the end of the handout, and to share the just laws they wrote.
   b. Now take a vote. Was the theft of food by the homeless people excusable on moral grounds? Should the family have turned the homeless in to begin with? Should the homeless be put in prison for life? If not, is another punishment appropriate? What should be done?
   c. Ask students to take a position. Is justice unachievable here? Is there such a thing as justice if it cannot be achieved here? Do they believe, with the CLS philosophers, that we have no universal concept of justice? Or do they agree with the traditionalists that a universal law governs us?
3. Have students read Handout 2 and set up the trial as instructed.
4. Tell students that, before the state of Frustration had a law stating everyone was entitled to a lawyer, defendants often had to present their own cases before the judges. Have the student chosen to be the defendant present his or her case before both panels at the same time. Tell the panel members that they are to decide the fate of the defendant based on the law and the philosophy held by their panel. Have the judges write their decision and seal it in an envelope for later review.
5. Conduct the second trial with attorneys before the traditionalist panel of judges.
6. When the trial has been completed, debrief.
   a. What were the facts of the case?
   b. What were the arguments for each side? Which arguments were the more compelling?
7. Repeat procedures 5–6, but for a trial before the CLS panel.
8. Discuss with the class whether it is important for attorneys to know whether a court has an overriding judicial philosophy.
9. Discuss whether different judicial philosophies can lead to the same or different verdicts. Can the philosophy of law and justice be important when determining who should be judges?
10. Have the judges reveal their decisions for the defendant's fate when defense attorneys were not used. Discuss the following questions. Was the verdict different when the case was tried without attorneys? If so, why? What advantages are there to being represented in court by someone who knows the law? What advantages are there in being represented by attorneys who know the different philosophies of law? Then have students discuss why having access to legal counsel is an important right for every defendant.

Student Handout 1

Justice and Legal Theory

Modern American legal philosophy struggles with the question of how to achieve justice through the law. What is a just law? How do we formulate a just law? How can we interpret existing laws justly? These questions are interwoven throughout the development of modern legal philosophy.

Traditionalist Western View

Traditionalist Western legal philosophers link law with morality. They talk about justice as a universal idea—one that applies to us all, and one that we all understand. They say that, if we think deeply about justice, we can compare society's laws with it, and see whether justice is being served or violated by each law. If a law violates justice, then we can change it. But law, at the same time, can be just.

For example, if a law makes slavery legal, and we compare this law with the concept of justice, we can see that slavery is unfair and that it violates "natural law"—the greater law that binds us all. Once we recognize this, we will overturn the unjust law, as Americans did when they overturned laws that allowed slavery in the United States.

A traditionalist would say that an unfair law is really no law at all—that it is invalid because it is immoral. An example of an invalid law might be one that calls for the imprisonment of any homeless person because that person is poor. If this person appeared before a traditionalist judge, the judge might not want to enforce the law on moral grounds and might seek a way not to, perhaps by reinterpreting the law or even by resigning on moral grounds.

Yet, traditionalists maintain that we must work within, not outside, the law's established framework. That is, we must respect existing law even as we seek to change it. Because of our concept of justice, we can succeed.

Critical Legal Studies View

An irony in the Traditionalist Western view is precisely that unfair laws are created and permitted to exist, regardless of any universal concept of justice people might have. (It took a civil war to end slavery in the United States.) Critical Legal Studies (CLS) philosophers say this is because of the conflict between what is really fair and what those in power want to be "fair." In the case of slavery, slave owners wanted to keep their slaves (property) in part because losing them meant losing a great part of their wealth.

As with slavery, the law is often corrupted by the desire to get or to maintain power and wealth. In other words, according the CLS view, law is not based on a concept of justice at all, but on the political and economic motives of those who are in a position to make the law at a given time.

Insular Frustration

Say you live on the island-state of Frustration. This state is overpopulated, and there is nowhere to go. Chaos threatens. A law exists making homelessness a crime punishable by life imprisonment. Your family knows where some homeless people are hiding, but you protect them and tell no one because doing so would be immoral. One day the homeless, who are starving, break into your home and steal your food and money. Then they do so again. Now will your family turn in the homeless? Will the judge follow the law and sentence them to life in prison? What if the judge is your aunt? Can justice be found anywhere in this situation?

The CLS philosophers say that justice is a myth. Those who have power will manipulate the law to serve their own ends. Those who don't may suffer. So no one person or group should be able to use the law to remain in power. The social structure, and the laws, have to be constantly reexamined and redefined so that tyranny of this sort cannot exist.

Questions in the case of the homeless on the island-state of Frustration might be: Why put them in prison because they are poor? What else might be done to solve the problem? How about forcing people with homes to let the homeless move in? Is this more just, or less just? Can justice be achieved for both groups? Why or why not? Can the law be changed to ensure justice instead?

Try to write such a law here.

Student Handout 2

Justice in the State of Frustration

Problem

The legislature on the crowded island-state of Frustration has passed a law making homelessness a crime. All homeless people are required by law (1) to leave the island on a small raft with a week's (furnished) provisions, (2) to voluntarily become a household slave, or (3) to go to jail until ready to select 1 or 2.

There is no constitution in Frustration other than a basic statement that the legislature is the supreme authority and law-making body of the land. Its laws are absolute, and there are no overriding constitutional provisions such as "equal protection" or "due process of law." But all persons to be tried as criminals have a right to counsel if their sentence involves going to jail.

A captured homeless person has refused to leave town or to become a slave. This person will go to jail unless the defense attorney can win the case in the Court of Frustration.

There are two three-member panels of judges who decide all cases for the Court of Frustration. One panel has the Traditionalist Western view of justice, and the other has the Critical Legal Studies view. Obviously, the defense and prosecuting attorneys' approaches will have to be very different depending on the panel deciding the case. As attorneys, they know how to tailor their arguments to the philosophy of the judges.

The Simulation

Directions: Pretend that your class is in the State of Frustration. Elect six judges—three for the traditionalist panel, and three for the CLS panel. Assign a court reporter to each panel. Choose a student to be the defendant. Then split the remaining students into two defense teams and two prosecution teams, with one of each arguing before one panel of judges only. Each team will select a defender or prosecutor to argue the case before the judges, and each will prepare arguments appropriate to the judges and the side of the case for which they are arguing.

Start trial 1 by having the defendant present his or her own case before both panels at the same time. Each panel should make a decision about the defendant's fate and seal it in an envelope for later reference.

Then conduct two trials in which the defendant is represented by a defense attorney and the state is represented by a prosecuting attorney.

As the defenders and prosecutors present their cases, the court reporters will note down their arguments. These will be given to the judges, who will deliberate in front of the class. (The class will not speak during these deliberations.) Finally, the judges will announce their decisions, and the class will compare them in light of the arguments the attorneys made.

Comparative Legal Services

An analysis of the delivery of legal services to the poor in nations around the world

Edward M. Wise

Three Approaches to Funding

Giving poor people equal access to law is a worldwide problem. It has not been completely solved anywhere. There is no simple solution. Different countries have tailored partial (and not always satisfactory) plans to their own particular situations.

One possible solution is to have lawyers serve the poor for free. Starting in France in 1851, nineteenth-century European laws required private lawyers to provide legal services to the poor without charge. While this method is generally thought inadequate today, it remains the main approach in such countries as Belgium and Italy.

This approach may work better elsewhere than it would in the United States, where each side usually pays its own lawyer. In most other countries, a person who loses a civil case has to pay the legal costs, including attorney fees, for both sides. Thus, the lawyer who takes a poor client's case and wins can expect to be paid by the losing side.

Another partial solution is to rely on private groups (such as legal aid societies or trade unions) to help people who cannot afford a lawyer.

In Japan, the state does not fund legal aid in civil cases. It is provided by private groups, most notably the Japan Legal Aid Association. This legal aid typically is a loan, which must be repaid if the lawsuit succeeds.

In many places, trade unions are important providers of legal aid. This is true not only in Belgium and Italy, where the official legal aid does not pay lawyers, but also in Germany and England, where it does. Although England has the most expensive state-funded system in the world, English trade unions provide lawyers for their members in lawsuits over accident claims (not necessarily work related). This happens in about 29 percent of all accident cases. A further 28 percent of people suing over personal injury receive state-paid legal aid.

In Brazil, where the free legal services provided by state governments are underfunded and inadequate, church social welfare organizations are an important source of legal aid in some areas.

A third solution is state-funded legal services. Although some people disagree, this is widely seen as the best solution. Yet most countries set aside little money for legal services. In many nations, such help is available only in the most serious criminal cases and is slight or nonexistent for civil matters. Countries that devote meager funds to legal services include not only developing nations, but also relatively rich democracies such as Italy and Japan.

Rights and Reality

Even where legal services are a constitutional right, public funding may be inadequate. For instance, the Brazilian constitution guarantees that "legal assistance will be granted to those who need it in the manner established by law."

The law requires the courts to appoint counsel to represent indigents. The appointed lawyer may work for a private firm or a legal service agency. Most large cities in Brazil have public legal aid offices, but these are sometimes hard to reach. The offices' part-time lawyers are not always there.

Lawyers in private firms are expected to represent indigents without pay (unless they win a civil case and get paid by the losing side). In reality, Brazil's legal services reach only a small fraction of the poor, and the constitutional guarantee of legal assistance is said to be an illusion for the most part.

Similarly, the Italian constitution says: "Poor persons shall be assured, through appropriate institutions, the means to plead and defend themselves before any court." Yet Italy also relies mainly on court-appointed lawyers working without pay (again unless they are paid by the losing side in a civil case). The state pays lawyers to represent indigents only in cases involving employees' rights and benefits and in cases involving very serious criminal charges.

Switzerland, on the other hand, has done an admirable job of implementing its constitutional right to free counsel for poor people. In 1937, over a half century ago, the Swiss Supreme Court declared poor people did not have "equality before the law" as was guaranteed by that nation's constitution. Consequently, the court ordered the governments of the cantons (states) to

Note: In order to avoid misinterpretation, the term *legal services* is used in this article wherever the author is discussing the delivery of both civil legal services and indigent defense. *Legal aid* is used to denote civil legal services.

Edward M. Wise is professor and director of the Comparative Criminal Law Project at the Wayne State University Law School in Detroit, Michigan.

provide free lawyers to poor litigants in civil cases. In a series of decisions since 1937, the court broadened and enforced this constitutional guarantee.

In *Airey v. Ireland*, 2 E.H.R.R. 305 (1979), the European Court of Human Rights ruled that the "fair hearing" guaranteed by the European Convention on Human Rights means that all European governments must provide free lawyers to poor people who cannot effectively make a claim without legal help.

The case involved an Irish woman who could not afford a lawyer. A court refused to appoint a lawyer to represent her when she sought a legal separation from her husband. To comply with the *Airey* decision, the Irish government in 1980 set up a state-funded system that has a staff of lawyers. It is, however, quite limited and mainly deals with family-law problems, particularly domestic violence.

It is somewhat embarrassing to note that if the United States were part of the European Convention, we would be in violation of *Airey v. Ireland* because we do not guarantee free counsel for poor people in civil cases.

State-funded Judicare Systems

About a dozen countries pay for wide-reaching and more-or-less effective legal services. For the most part, these countries have "judicare" systems. Judicare pays private lawyers (rather than its own staff of attorneys) to provide legal services. Among those relying on judicare are three western European countries: Germany, France, and England.

Since the mid-1870s, German law has guaranteed that nation's poor a right to free counsel in civil as well as criminal cases. Germany first provided funds to pay the lawyers representing the poor in 1923. In 1980 West Germany extended legal services from only the poor to people of moderate means who could not afford legal costs. The German system now pays lawyers to give legal advice as well as represent clients in court.

German courts handle applications for free representation in court. The court must decide (1) whether the applicant is financially eligible for legal services; and (2) whether, in a civil case, the claim is serious and has a chance of success. The second point permits the court to review the merits of a civil lawsuit before the case is actually tried.

The court usually appoints the private lawyer requested by the applicant. Public funds will pay the lawyer somewhat less than German lawyers are regularly allowed to charge. If the lawyer wins the case, he or she may get the full fee from the losing side. The client who has income or other properties above a certain amount may have to repay the state, perhaps in installments.

France also has had a right to counsel for poor people since the 1870s. In 1972 France acted to begin paying private lawyers to provide these services. The French system was extended to legal advice outside court in 1991. As in Germany, people who are not financially eligible for full legal aid may receive partial funding.

In France, applications for lawyers in civil cases are screened by a legal aid bureau—a local committee of government representatives, judges, and lawyers. If an applicant is financially eligible, legal aid must be granted unless the case has no chance of success.

The appointed lawyer is paid from public funds at fixed rates somewhat lower than those ordinarily charged. A winning lawyer may obtain an ordinary fee from the losing party (although in France the exact size of the fee is set by the court).

Applications for legal advice on matters that do not go to court are handled by separate legal aid boards in each of the departments into which France is divided. These boards mainly coordinate the help available through groups such as bar associations and voluntary organizations.

Three Systems

Free Services from Private Attorneys

*Example Nations**

Belgium
Italy
England

Free Services from Private Groups

- Legal aid societies
- Trade unions
- Church organizations

*Example Nations**

Japan
Brazil

*Use(s) this system to a great extent, but not to the exclusion of other systems.

State-funded Legal Services

- **Staff-attorney system**

*Example Nation**

Finland

- **Judicare**

*Example Nations**

Germany
France
England

- **Mixed systems**

*Example Nations**

Netherlands
Sweden
Canada/Ontario, Quebec

Vocabulary

Bar associations are organizations of lawyers.

Civil cases focus on the private rights of individuals and the laws protecting those rights. Civil lawsuits deal with such matters as ownership, contracts, and personal injury.

Criminal cases deal with acts that are believed to harm society as a whole, such as murder, robbery, and assault.

A *felony* is a serious crime.

Indigents are poor people.

IOLTA stands for Interest on Lawyers' Trust Accounts. Law firms hold a variety of funds in trust. These funds earn interest that pays for nonprofit programs, such as legal services for poor people.

Judicare is a system of legal services. Judicare uses public money to pay private lawyers to represent poor people.

Legal aid offices are funded in a variety of ways to furnish legal services to the poor. Many provide both civil legal aid and indigent defense. Legal services to juveniles may also be provided.

Legal services are any of several programs that deliver legal aid and indigent defense.

A *litigant* is someone who engages in a lawsuit.

Litigation is a lawsuit or other legal proceeding.

Magistrates' courts in England and Wales try most minor offenses. These courts are run by justices of the peace, most of whom are not trained lawyers.

Per capita means "for each person."

A *plaintiff* is a person who files a lawsuit.

Pro bono describes legal services performed by a lawyer who is not paid to provide these services.

Staff-attorney systems pay a staff of lawyers, rather than private lawyers, to represent poor people.

England has had a right to counsel for poor people in civil cases for almost 500 years, since 1495, to be exact. In 1949 the English government set up an ambitious program to pay the lawyers who were providing those services. The goal was to guarantee every English citizen the same quality legal representation that well-to-do citizens enjoy. Initially, the English system covered about 80 percent of the population. Even now, despite more restrictions on who's eligible, legal services are at least partly available to people of moderate means.

In England, a national Legal Aid Board supervises a network of legal aid offices that handle applications for legal aid. Area committees made up of lawyers consider applications and reject cases that have no reasonable chance of success.

In criminal cases, the courts generally determine whether a case deserves legal services. Legal aid offices do not themselves provide legal assistance. A successful applicant receives a certificate that entitles her or him to the services of a solicitor and, if need be, a barrister. (Barristers generally try cases in the higher court. Solicitors advise clients, prepare cases for trial, and also do a lot of trial work in lower courts.)

Under the "green form" scheme first introduced in 1973, English solicitors are paid for giving advice to clients who meet government guidelines and declare they are eligible for funding simply by signing a green form. (Today the solicitors are paid for up to two hours of advice.)

The English system also pays duty solicitors who take turns advising unrepresented defendants in magistrates' courts, and it also pays lawyers employed by the 55 community law centers.

When the current English system was established in 1949, there were those who argued that legal services should hire its own staff of lawyers. Instead, the system pays private lawyers who provide legal services and advice.

The United States rejected judicare when it set up its federal system during the 1960s. Instead, our system relies on neighborhood law offices. These employ full-time lawyers who specialize in legal problems connected with poverty.

The English community law centers, which date from the 1970s, reflect American influence. They are increasingly important, but hardly central to supplying legal services in England; they account for less than 1 percent of the public legal-services budget.

Mixed Systems

In some countries, the trend to combine judicare with a staff-attorney system is much further advanced than it is in England.

Europe

In the 1950s, the Netherlands set up state-supported legal services that relied on private lawyers. This system has been supplemented by legal aid bureaus (boros) in each judicial district. Until recently, staff lawyers at these boros gave free legal advice to the public and handed out certificates allowing an applicant to use a private attorney.

Since 1993, the certificates have been handled by a separate entity—a new bureau for providing legal services. Under the new system, boro lawyers can now represent clients in court as well as give legal advice. Roughly 18 percent of the Dutch budget goes to the boros, 82 percent to judicare.

The Scandinavian countries likewise have combined judicare and a staff-attorney system. Sweden relies mostly on judicare but also has 28 county bureaus with staff lawyers. Clients are free to choose between a staff lawyer or a private lawyer.

Norway relies more on judicare but has two offices with salaried lawyers who provide legal advice. Finland has 164 bureaus staffed by 212 lawyers, covering most municipalities in the country. Given the low number of lawyers in Finland, clients may have to use staff lawyers.

Australia

In Australia, legal services are funded by federal and state governments and by interest earned on money held in trust by lawyers (equivalent to IOLTA in the United States). New South Wales, the largest Australian state, established a public defender office in 1941. A public solicitor's office followed in 1943 to provide legal services in civil matters.

In the 1970s, the system was expanded to use both private solicitors and community law centers. The state has 26 community law centers, some specializing in particular fields of law such as consumer, environmental, welfare, and immigration law.

In New South Wales, the legal services system provides free legal advice by staff in branch offices across the state, the advice of a duty solicitor in each court, and grants of legal services for both criminal and civil court cases.

Cases may be handled either by legal services staff or private lawyers. Most staff lawyers focus on criminal cases. Private lawyers handle about 76 percent of the civil cases covered.

For legal aid to be granted, a case must have a good chance of success. Financial guidelines on who's eligible are fairly stringent. As a result, less of the population is served in New South Wales than in many places outside Australia.

North America

In Canada, legal services are the responsibility of the provinces (equivalent to states in the United States). Criminal and civil services generally are under the same umbrella. In the province of Ontario, what started as a criminal program is now almost equally divided between criminal and civil legal services.

Ontario has an area office that runs judicare in each county. It also has 51 legal aid clinics, which provide services not traditionally offered by private firms. About 90 percent of Ontario's legal services budget goes to judicare and about 10 percent to the clinics.

In the province of Quebec, 151 legal aid offices are staffed by lawyers in 117 cities. An eligible client may choose a private lawyer from a list of those willing to take legal services cases; otherwise, a staff attorney will be assigned. Staff lawyers provide about 60 percent of legal aid in civil cases in Quebec, paid private lawyers about 40 percent. Private lawyers handle a higher share of criminal cases.

Comparisons

In Canada and most European countries, legal services are funded more generously and therefore are more widely available than in the United States. This remains true despite cutbacks in the past decade and increasing pressure around the world to reduce government spending.

It has been estimated, for instance, that England spends nearly seven times as much per capita as the United States on civil legal aid. Ontario spends six times as much, the Netherlands five times as much, Sweden and Quebec about four times as much, and Germany and France twice as much. To give you an idea of what this means, if the Legal Services Corporation's budget for the United States were to match the English legal aid budget on a per capita basis, it would be 3.5 billion rather than its present 400 million dollars a year.

As a result, legal aid in these countries serves more people than does legal aid in the United States. Every applicant who meets the criteria for legal aid is entitled to receive it. The legal aid client usually receives the same services that a paying client would receive.

In these countries, legal aid generally reaches people whose income would disqualify them in the United States. It has been estimated that roughly 80 percent of people in Sweden, 65 percent in the Netherlands, and between 37 percent and 52 percent in England (depending on the type of case) qualify for at least partial legal aid. In the United States, even genuinely poor people may be refused legal aid if the local program, working within a limited budget, does not have the staff to accept them as clients.

The picture is complicated by other differences. For example, in the United States, poor plaintiffs in personal-injury cases usually can hire a lawyer on a contingent-fee basis. The client is not charged if he or she loses but has to pay the lawyer a substantial portion of any money received if the suit succeeds. Most other countries see such contingent fees as unethical. In the United States, at least in certain kinds of cases, the contingent fee partly substitutes for a public legal-aid program.

So do the voluntary pro bono services provided by American lawyers. These amount to about 10 percent of the free legal aid available in the United States. Countries with judicare generally rely much less on pro bono work; it is awkward to ask private lawyers to offer for free the same services for which the government pays other private lawyers.

The staff-attorney program in the United States has been controversial largely because of what some consider

its great strength—its ability to tackle system-wide law-reform and strive for policy changes on behalf of low-income groups. Countries that rely mainly on judicare have avoided much of this controversy.

Judicare systems have been confronted, however, with spiraling costs. Countries such as England, with very high public spending on legal services, are now considering whether to rely more on less expensive staff (or perhaps franchised) legal services. Thus they are beginning to move toward the American system for delivering legal services. Yet they continue to guarantee civil as well as criminal representation as a matter of right, something we still don't do in the United States. ◆

South Africa: Any Hope of Equal Justice?

REUTERS/BETTMANN

South Africa has a very short tradition of legal services and a very long tradition of injustice.

For decades South Africa's courts enforced its apartheid laws, which discriminated against black and mixed-race people but protected the privileges of whites. For example, the early laws stated that a black person could not remain in a white area for more than three days without permission. Marriages between whites and people of other races were banned. Black South Africans could not own land outside designated areas.

Almost all black South Africans—85 percent—who appeared in criminal court had no lawyer. About 100,000 undefended people were sent to prison each year, most of them black. Accused people had few rights; the defense did not know in advance what evidence or witnesses the state planned to use, and improperly obtained evidence was admissible in court. Black South Africans were at a severe disadvantage.

Now that South Africa is moving toward a society that recognizes black and mixed-race people as the equals of whites, equal justice for all is one of the country's ideals. Whether that ideal will become reality remains to be seen. The Legal Resources Center (LRC), a nonprofit public interest law firm, has existed in South Africa since 1979. It provides civil and criminal legal services without charge to the poor, homeless, and landless, and those who suffer race, gender, and other types of discrimination. The LRC is supported by contributions and grants from around the world, and many consider it to be the best public-interest law firm. Three other public-interest law firms, the Black Lawyers' Association, the Lawyers for Human Rights, and the Community Law Centre, also provide free legal services, as do many South African law schools today.

Two years ago the first South African Public Defender Office opened. Only very poor people were entitled to use its services, and they had to seek it out—courts rarely informed people that it existed. Yet within the first six months, the office handled almost 1,500 cases and won more than half its trials.

Despite this success, the office's future is uncertain. The government initially hoped that businesses would contribute money to run the office, but that did not happen on a wide scale. Some people criticized the office as being too dependent on the white government. Because the country faces huge problems with poverty and unemployment among its black citizens, some people believe protecting the rights of defendants is less of a priority. However, with a newly elected black government in power, the ideals of equal justice will hopefully become a priority and/or reality.

Information about the South African Defender Office is taken from David J. Winer, "S. Africa's Public Defender System Faces Uncertain Future," *Chicago Daily Law Bulletin*, 10 June 1994.

BEST COPY AVAILABLE

Teaching Strategy

Justice for All?

Julia Ann Gold

In this lesson, students investigate a little-discussed topic—how we provide (or better stated, do not provide) civil legal services for the poor in the United States. First, students complete an opinion poll. They identify cases for which they think the government should provide legal assistance. They are then presented with information on the law as it relates to each case.

Background

In the United States, the courts have ruled that the government must provide lawyers for persons accused of a crime who face a jail sentence. In civil cases, people who cannot afford legal help are not guaranteed the help of lawyers. Yet the majority of court cases are civil-law cases. These cases include family matters, such as divorces and child custody; entitlement to public benefits, such as food stamps, social security, and Aid to Families with Dependent Children (AFDC); breach of contract cases; collection of debts; property issues, including landlord-tenant disputes and the purchase of real estate; personal-injury cases, such as car accidents and medical malpractice; wills and estates; and more.

The provision of civil legal services in the United States depends on the pool of government money available to pay lawyers for representing the poor, not on the number of clients actually in need. The result is that civil legal services programs often cannot help all those who qualify. Many private law firms will accept civil cases on a pro bono, "for the good" (or free), basis. Yet the pro bono work and the government legal services cannot begin to help all the people in need. Some people would say that many poor people are denied equal access to our system of civil justice.

Many countries have declared that people have the right to counsel in civil cases even if they cannot afford to pay for it. Most back up this guarantee with government funds to pay for legal services. The United States has greatly increased funding for legal services over the last 20 years, but it still remains behind other democracies. For example, England spends seven times as much as the United States on a per-capita basis, and Germany spends twice as much.

Objectives

In this lesson students will

- identify when a person is entitled to a free lawyer
- examine policy implications of providing free lawyers in certain types of cases
- rank client needs
- draft a policy statement about when free legal services should be provided for the poor

Target Group: Junior high and high school students

Time Needed: 1–2 class periods

Materials Needed: Student Handout 1 "Opinion Poll—Justice for All?"
Student Handout 2 "Right to Legal Counsel"

Procedures

1. Give students a copy of Student Handout 1 "Opinion Poll—Justice for All?" and ask them to complete it individually.
2. After students have completed the poll, take a hand count for each issue, recording the information on the chalkboard. Encourage students to offer reasons for their opinions. Ask questions such as these:
   - Should it matter how complicated the legal proceedings are?
   - Should it matter what the consequences of the outcome of the legal proceedings are?
   - Can a person receive the "equal protection of the law" in court without a lawyer?
   - Can a person receive "due process" in court without a lawyer?
   - Can a person who is not represented by a lawyer achieve a fair result in court against a party who is represented by a lawyer?
   - Should a person accused of drunk driving get a free lawyer but not a person seeking protection from an abusive spouse?
   - Is custody of children as important as being tried for drunk driving?

   Then have students read and discuss the state of the law for each issue as noted on Student Handout 2 "Right to Legal Counsel."
3. Divide students into groups of 5, and tell them they are law firms. Assign each law firm 4 or 5 of the clients from the opinion poll (or others you create). Tell students to decide what cases they will take and to explain why. They should take at least 3 clients. Then ask each firm to report to the rest of the class which clients they will represent and why.
4. Have students work in the same small groups to develop a policy for when and to whom free lawyers should be provided.

Julia Ann Gold is Mediation Clinic Director, University of Oregon Law School, Eugene. Formerly, she was the deputy director of Seattle University of Law School's Institute for Citizen Education in the Law.

Student Handout 1

Opinion Poll—Justice for All?

Directions: Read each statement and place an X in the column that best reflects your opinion.

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree
a. Marta hires a lawyer to sue Reginald for $5,000 that she claims he owes her. Reginald says that he does not owe the money and cannot afford to hire a lawyer to defend himself. The government should provide a free lawyer to defend Reginald.					
b. Mai's husband left her and their three children. He has hired a lawyer and is seeking custody of the children. Mai wants to keep the children, but she cannot afford to hire a lawyer. The government should provide a free lawyer to represent Mai.					
c. April is arrested for shoplifting. She has no money to hire a lawyer to defend herself. The government should provide a free lawyer to represent April.					
d. David is arrested for murder and has no money to hire a lawyer to defend himself. The government should provide a free lawyer to represent David.					
e. Roberto wants to sue his landlord for the $500 security deposit that the landlord kept when Roberto moved out of his apartment. Roberto cannot afford to hire a lawyer to represent him. The government should provide a free lawyer to represent Roberto.					
f. Carrie is a low-income person whose husband abuses her. She wants a court order to keep him away from her, but she cannot afford a lawyer to help her. The government should provide a free lawyer to represent Carrie.					
g. Arnold wants to prepare a will. He cannot afford a lawyer to draft the will. The government should provide a free lawyer to help Arnold with his will.					
h. Eileen is arrested for drunk driving. She has no money to hire a lawyer to defend herself. The government should provide her a free lawyer.					
i. Fiona is addicted to drugs. Child Protective Services, a state agency, took her children away from her because they say that she neglected them. Now the state wants to end Fiona's parental rights to her children. Fiona cannot afford to hire a lawyer. The government should provide a free lawyer to represent Fiona.					
j. Tim wants to divorce Tina, his wife of 15 years. He cannot afford a lawyer. The government should provide a free lawyer to represent Tim.					
k. A government that provides free medical care for low-income families should also provide them with free legal services.					

Student Handout 2

Right to Legal Counsel

a. This suit is a private matter between Marta and Reginald. The government will not always provide a free lawyer in such a case. Marta's lawyer may have taken this case on a contingency basis. This means that her lawyer would receive a percentage of the amount recovered from Reginald rather than a set or hourly fee.

b. The government does not guarantee a free lawyer in divorce or custody cases. The government-funded legal services office in Mai's area handles custody matters and would probably take her case, depending on how busy the staff is. The staff must set priorities because of their heavy caseload. Mai would have to qualify under income guidelines and might have to wait longer than if she could hire her own lawyer.

c. Since April is accused of committing a criminal offense for which she could be imprisoned, she is entitled to a free lawyer to defend her if she cannot afford one.

d. David is accused of committing a very serious criminal offense (murder); therefore, he is entitled to a free lawyer if he cannot afford one.

e. In this case, Roberto could probably represent himself in small-claims court. Small-claims courts hear cases involving relatively small amounts of money, usually amounts under $2,500–$5,000. Most small-claims courts do not require lawyers, and many do not allow lawyers. The parties represent themselves. Filing fees are small, and the waiting period for a hearing date is usually short.

f. Carrie is not entitled to a free lawyer to help her get a court order protecting her from her husband. Many states, however, have advocacy programs that assist victims of domestic violence. Victim advocates help abused persons complete court filing papers and prepare them for court hearings.

g. Arnold is not entitled to a free lawyer to help him prepare a will. Some legal services offices can provide this type of service if Arnold fits within the income guidelines.

h. Eileen is entitled to a free lawyer since her offense, drunk driving, is one for which she could be imprisoned. If she qualifies under the income guidelines, the government will provide her with a lawyer.

i. If she qualifies, Fiona may be entitled to a free lawyer in this action that is challenging her parental rights. This is one type of civil case in which some states have held a person is entitled to a free lawyer.

j. Tim is not guaranteed a free lawyer. If he qualifies, he may be entitled to the assistance of a lawyer at a legal services office. If the office is very busy, this type of case would probably be a low priority. In many states, the divorce process has been simplified so that people can represent themselves.

k. Many argue that legal services are just as important as medical care since equal access to justice is at the heart of our democratic form of government.

Representation for the Poor

Legal services pioneer Reginald Heber Smith's 1919 book *Justice and the Poor* noted,

> "Differences in the ability of classes to use the machinery of the law, if permitted to remain, lead inevitably to disparity between the rights of classes."

Do you see this happening in our country? If so, what examples can you give?

Right to Counsel

A look at when the state must provide legal services to the poor

John W. Guendelsberger

Four Amendments

There has never been much controversy over a person's right to a lawyer if he or she can afford the legal fees. The more difficult question has been whether the state must provide an attorney for someone who lacks the means to pay.

Before looking at the Supreme Court decisions, let's examine three parts of the U.S. Constitution that might require society to provide a lawyer for poor litigants.

Fifth Amendment: "No person shall ... be deprived of life, liberty, or property, without due process of law."

Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense."

Fourteenth Amendment: "No state shall ... deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Which of these most clearly expresses a right to legal counsel in criminal cases? Which provides the best argument for civil cases? (Criminal cases deal with acts believed to harm society as a whole, such as murder. Civil cases focus on the private rights of individuals.)

The Sixth Amendment, which makes the only explicit reference to a right to counsel, is limited to criminal cases. As part of the American Bill of Rights, the Fifth and Sixth Amendments apply directly only to actions of the federal government, its agents, and its employees.

Therefore, these amendments apply directly only to federal courts—but about 95 percent of criminal cases are heard in state courts. Therefore, the right to counsel in state criminal cases must stem from some other part of the Constitution than the Sixth Amendment. It comes from the Fourteenth Amendment, particularly the due-process clause, which applies to acts of the states.

Criminal Cases

Capital Offenses

The U.S. Supreme Court first discussed the right to counsel for state criminal defendants in *Powell v. Alabama*, 287 U.S. 45 (1932). In *Powell*, several young African Americans were rushed to trial for capital offenses without a lawyer's help in their defenses.

In reversing their guilty verdicts, the Supreme Court held that the "failure of the trial court to make an effective appointment of counsel" was a denial of due process under the Fourteenth Amendment. The Court explained that a basic part of due process is the opportunity to be heard, an opportunity that means little if it does not include the right to counsel:

> Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him.

Although this language might suggest that people have a right to counsel in every criminal case, the scope of the Court's ruling in *Powell* was much narrower. The Court held only that "in a *capital case*, where the defendant is unable to employ counsel, *and is incapable adequately of making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like*, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law."

Federal Cases

In *Johnson v. Zerbst*, 304 U.S. 458 (1938), the Supreme Court held that the Sixth Amendment required a lawyer to be appointed in *all* federal criminal cases. States continued to vary in appointing legal counsel for indigent

John W. Guendelsberger is a professor of law at the Ohio Northern University College of Law in Ada.

defendants—some provided counsel in all felony cases, others in only capital cases.

Betts

In *Betts v. Brady*, 316 U.S. 455 (1942), the Court ruled that an indigent criminal defendant did not have an absolute due-process right to a state-paid lawyer in noncapital felony cases.

In so ruling, the Court held that the right to counsel in federal cases protected by the Sixth Amendment was not "so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the States by the Fourteenth Amendment."

After reviewing the history of the right to counsel in colonial times, the Court concluded that a state's refusal to provide a lawyer to poor people in all criminal trials did not violate due process. Due process required the appointment of a lawyer only in cases where the penalty was severe, the issues difficult, and the defendant inexperienced.

In *Betts*, however, the penalty was moderate, the issues were simple, and the defendant of average intelligence and somewhat familiar with criminal procedure from earlier convictions. When all these factors were considered together, the Court concluded, Maryland's refusal to give Betts a lawyer did not violate due process.

Gideon

The Court sharply reversed course two decades later in *Gideon v. Wainwright*, 372 U.S. 335 (1963). It struck down a Florida conviction because the state failed to give the accused person a lawyer.

Although Gideon was charged with a felony (breaking and entering a pool room with intent to commit a misdemeanor), Florida law provided counsel for indigent defendants only in capital cases.

In *Gideon*, the Court overruled *Betts* and found for the first time that "the Sixth Amendment's guarantee of counsel is...one of those fundamental rights" protected by the due-process clause of the Fourteenth Amendment. The Court explained that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."

The *Gideon* decision left unresolved whether counsel would be required in nonfelony cases (misdemeanors and petty offenses).

Argersinger

In 1972, the rule for appointment of counsel was given a new twist in *Argersinger v. Hamlin*, 407 U.S. 25 (1972). At issue was a Florida law providing counsel when the charges could lead to more than six months in prison. Argersinger's charge, carrying a concealed weapon, was punished by exactly six months in prison.

In *Argersinger*, the Court rejected Florida's "six-months" approach to appointment of counsel and focused on whether the accused was ever actually deprived of liberty. The Court noted that "[t]he requirement of counsel may well be necessary for a fair trial even in a petty-offense prosecution," since such cases may be as complex as felony cases.

After *Argersinger*, "no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel." If a judge decides not to appoint counsel, a person who is found guilty can be sentenced only to fines or probation.

Dissenting Justices Powell and Rehnquist suggested that the *Argersinger* rule was too mechanistic and gave indigent defendants an advantage over those who earned just too much to get free counsel. They preferred the old *Betts v. Brady* case-by-case balancing approach.

Post-Conviction Rights

The due-process right to counsel extends beyond the trial to the first level of appellate review. In *Douglas v. California*, 372 U.S. 353 (1963), the Court relied on the equal protection clause of the Fourteenth Amendment. It also referred to its decision in *Griffin v. Illinois*, 351 U.S. 12 (1956), which required states to give indigent defendants a free transcript of their cases when they appealed. The Court reasoned that:

> In either case [denial of transcript or counsel] the evil is the same: discrimination against the indigent. For there can be no equal justice where the kind of an appeal a man enjoys "depends on the amount of money he has."

Since the *Douglas* decision, the Court has not relied on the equal protection clause when analyzing the right to counsel.

In *Ross v. Moffitt*, 417 U.S. 600 (1974), the Court refused to extend the *Douglas* rationale beyond the first level of appeals. States need not provide counsel for appeals to state supreme courts or for petitions to the U.S. Supreme Court. The Court stated that due process does not require "the same access" for indigent defendants as for those who can afford counsel. It requires only "adequate access" to the appellate system.

The right to counsel arose again in a new context: a hearing to revoke a person's probation or parole, sending that person to prison. In *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972), the Court held that the need for counsel at a hearing to revoke probation should be determined case by case. It depended on the complexity of the issues and the need for counsel in a particular case.

In *Gagnon v. Scarpelli*, 411 U.S. 778, 785-89 (1973), the Court also held that in hearings on revoking parole, due process gave no automatic right to counsel. However, due process required that the need for a lawyer be assessed case by case.

The logic behind these decisions in criminal cases was that a meaningful opportunity to be heard occurred only with a lawyer's help. This suggested that the Court might require counsel for

indigents in civil cases in which important liberty or property rights were at stake. But the Court has been much more reserved in recognizing a right to counsel in civil court cases.

Civil Cases

Because the Sixth Amendment doesn't apply to civil cases in state courts, the right to counsel there comes from the due-process clause of the Fourteenth Amendment. (A similar due-process clause in the Fifth Amendment applies to civil cases in federal courts.)

Loss of Liberty

In civil cases in which a person may be held in mental-health or juvenile-detention facilities, the courts have recognized a due-process right to a lawyer. Although the person is not being held as a punishment, he or she suffers a severe loss of liberty. A person generally needs an attorney to present a good case against commitment.

Consequently, many states have laws that say indigents facing commitment are entitled to a state-paid lawyer. In other states, courts have ruled that the U.S. Constitution or the state constitution requires a lawyer to be appointed in such cases.

In *Vitek v. Jones*, 445 U.S. 480 (1980), the Supreme Court considered the need for counsel when a person in prison faces a possible transfer to a mental hospital. The Court found that the person required a lawyer, because of the additional stigma of entering a mental hospital and the additional loss of liberty involved.

In the case of minors being committed against their will by parents, the Court held that no right to counsel exists. This is because the parents had a role in a decision that was medical, nonpunitive, and informal.

The Supreme Court has ruled that a minor who could be sent to a facility for juvenile delinquents has a right to a lawyer. The Court observed that "the juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon the regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it." *In re Gault*, 387 U. S. 1, 36 (1967).

No Rights

Beyond cases involving actual loss of liberty, however, the Supreme Court has not recognized a constitutional right to a lawyer. Many civil cases, such as divorce, child custody, and civil-rights suits, involve high stakes—stakes at least as high as the few weeks in jail that could result from an unfair misdemeanor conviction. A parent involved in a child-custody dispute with the state, for example, may not understand why he or she can have a lawyer to fight a misdemeanor charge but not an action to end parental rights.

In the early 1970s, the Supreme Court seemed to be moving toward recognizing a poor person's general right to counsel in civil cases. In *Boddie v. Connecticut*, 401 U.S. 371 (1970), the Court ruled that due process meant a state could not charge a welfare recipient $60 to file for divorce. The Court in *Boddie* stressed that "persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard."

Lassiter

The reasoning in *Boddie* suggested that people might require a lawyer's help in order to get a fair divorce hearing. In *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), however, the Court made clear that it would not recognize such a broad right to counsel.

The Court held that the state had not violated due process by failing to appoint counsel before terminating a person's parental rights. It announced a case-by-case test for deciding when the right to counsel existed in civil cases.

Unless physical liberty is at stake, the Court explained, there is a presumption that no right to a lawyer exists. When physical liberty is not at stake, the right to counsel depends on three factors: (1) the importance of the individual interest at stake, (2) the state's interests in proceeding without counsel, and (3) the extent to which a lawyer might reduce the risk of an unfair decision.

In *Lassiter*, the Court recognized that the first two factors favored appointing a lawyer. The parental interest at stake was of the utmost importance. The state had only a weak interest in avoiding the expense involved. When the third factor was considered, however, the Court found a lawyer could have done little to obtain a different outcome.

Lassiter at the time was serving 25 to 40 years in jail for murder. Her child was already in state custody. The Court found that, on balance, the three factors in Lassiter's case did not outweigh the presumption she had no right to a lawyer. Denial of counsel did not violate due process.

Blackmun Dissent

Four of the nine justices dissented in Lassiter. Justice Blackmun expressed regret that the majority had adopted for civil cases the approach rejected for criminal cases in *Gideon* 20 years earlier. Justice Stevens questioned whether a few months in prison should be considered more important than permanent loss of parental rights. When such important liberties as parental rights are at stake, he suggested, the courts should not use a balancing test to decide whether counsel should be appointed.

The Supreme Court has not returned to the right to counsel in civil cases since its landmark decision in *Lassiter*, leaving this issue largely to the discretion of the states. Some state courts have expanded the right to counsel in some civil cases. Other states have enacted laws giving indigent people a right to a lawyer in civil cases. ●

Activities

1. A collection of taped arguments in landmark U.S. Supreme Court cases includes the arguments in *Gideon v. Wainwright*. The collection, *May It Please the Court* by Peter Irons and Stephanie Guitton (1993), is available in many public libraries. The *Gideon* tape is about 20 minutes long and provides a good start for discussing the right to counsel and the Court's role in shaping this right.

   Many students would enjoy A. Lewis's *Gideon's Trumpet* (1964), a brief and very interesting account of the struggle to establish the right to counsel in *Gideon*.
2. Ask students to apply the principles developed by the Supreme Court in right-to-counsel cases to other situations. Should a student facing expulsion in a school disciplinary hearing be entitled to an attorney at state expense? Should the right to counsel exist in every such hearing, or should the seriousness of the charge, the difficulty of the issues, and the possible consequences make a difference?

   In *Goss v. Lopez*, 419 U.S. 565, 583 (1975), high school students had been expelled from school for disruptive behavior during a demonstration. The Court held that due process required a hearing before expulsion, but because such hearings would normally be brief, informal, and part of the education process, state-appointed counsel was not required.
3. Under federal law, no aliens shall be deported to a country where they might be killed or persecuted because of their political opinions. Students could discuss whether an indigent alien who claims that she will be killed or imprisoned in her home country because of her political opinions has a right to a lawyer in a deportation hearing brought by the Immigration and Naturalization Service (INS). (Because the federal government [INS] seeks deportations, the alien's right to counsel must be based on the Fifth Amendment due-process clause.)
4. Ask students to consider what expense would be involved in providing counsel for poor people in civil cases. Who should pay the attorneys? How should the funds be collected? Is the potential cost one unstated reason that the Supreme Court is reluctant to recognize a broad right to counsel in civil cases? Might there be other unstated reasons?
5. Have students decide whether, as a condition of the right to practice law, a state might require attorneys it licenses to spend X hours each year representing poor people in civil or criminal cases. Would such a requirement, without pay, violate the Thirteenth Amendment to the Constitution? This Amendment says "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in the United States, or any other place subject to their jurisdiction."

Vocabulary

Adversary system of law is one in which each side presents its case in court, and the person who best presents the case wins. The adversary system is used in the United States.

Appellate review occurs when the losing side in a court case asks an appeals court to review the decisions made by the first, or lower, court.

Bill of Rights contains the first 10 amendments to the U.S. Constitution providing for individual rights, freedoms, and protections.

Capital cases are those in which a person found guilty might be sentenced to death.

Civil cases focus on the private rights of individuals and the laws protecting those rights. Civil lawsuits deal with such matters as contracts and personal injury.

Commitment is the act of handing over a person for safekeeping, for example, to a mental hospital.

Criminal cases deal with acts that are believed to harm society as a whole, such as murder and robbery.

A defendant is a person accused or sued in a law court.

Due-process rights are fundamental rights that require the government to treat all people with fairness and justice.

Federal cases are heard by the law courts of the central government of the United States.

A felony is a serious crime.

A litigant is someone who engages in a lawsuit.

Litigation is a lawsuit or other legal proceeding.

Misdemeanor or *petty offense* is a less serious crime than a felony.

Noncapital felony cases deal with serious charges that do not carry a death penalty.

Parole is a conditional release from jail before the full jail term has been served.

Probation is the practice of letting first or young offenders go free without serving the punishment they have been sentenced to, unless that person commits a further offense.

Student Forum

Should the Poor Have Free Legal Representation?

Margaret Fisher

To the Teacher

The Student Forum is a student-organized open discussion of a legal issue. Your role is to provide copies of materials to the students and to serve as a consultant. The forum is expected to take from two to five class periods depending on the number of characters included and the amount of discussion involved. Copy and distribute forum pages 59–62 to each student. You will need two copies of the ballot on page 62 for each student.

This Student Forum is an opportunity for you to take charge of your own learning. The forum is similar to a town hall meeting in which people come together to discuss ideas and issues. In the forum, you will explore the state and federal governments' role in providing free legal representation in civil and criminal cases. You will also examine your personal views on the subject.

Before the forum begins, you will complete a ballot to identify your attitudes about free legal representation. Following the forum, you will complete another ballot to determine whether your attitudes have changed.

Margaret Fisher is Director, Institute for Citizen Education in the Law, Seattle University Law School, Tacoma, Washington.

How to Organize and Conduct a Forum

1. The class selects five students to serve on the forum panel.
2. All students complete the pre-forum ballot and submit it to the panel.
3. All students form groups to develop or adapt character sketches for the forum.
4. The class members identify community members that they would like to invite to participate in the forum. With your teacher's permission, panel members invite guest speakers to the forum.
5. The panel selects student volunteers to serve as facilitator and clerk. It also identifies the students chosen to role-play the characters.
6. The clerk schedules the presentations of the characters and the guest speakers for the facilitator.
7. The students conduct the forum.
8. The class members discuss what policies they would implement.
9. All students complete the post-forum ballot. The panel reviews, compares, and summarizes the results.
10. The panel submits the tally to the American Bar Association.

Getting Ready

To prepare for the forum, read the Round Table, Vignettes, and other materials that interest you in this issue of *Update on Law-Related Education.* Then, as a class, brainstorm viewpoints for and against free legal representation for poor people. Your teacher will chart these viewpoints on the chalkboard.

Know These Terms

Civil cases: Cases that involve private disputes with others, including the government. A child-custody case is a civil case.

Criminal cases: Cases brought by the government to enforce the criminal law. A murder trial is a criminal case.

Legal aid lawyers: Lawyers who are paid to provide free legal representation to poor people involved in civil cases

Public defenders: Lawyers provided by the state to give free legal services to poor people accused in criminal cases

As a class, identify community members whom you would like to invite to participate in the forum. You may wish to ask, for example, a legal services lawyer, a government official, a public defender, or a defendant in a civil suit to testify during the forum.

Organize into an even number of groups of up to five students. With your group, choose a viewpoint for which you will develop a character. Make sure that an even number of pro and con viewpoints are chosen by the groups.

Develop and write a character sketch to promote your viewpoint. These pages include sample character sketches. You may use or adapt these sketches or create your own. Your character sketch should include the character's name, a specific viewpoint on free legal services for poor people, background information about the character that supports the viewpoint, and a request that a specific policy position be adopted. After you have developed the character sketch, select a group member to play the character's role in the forum. Give a copy of your character sketch to the panel and tell the panel who will role-play the character.

Roles Students Have in the Forum

Panel members
Clerk
Facilitator
Characters
Audience members

The Role of Panel Members

The panel organizes the forum. Members tally and submit the results of the pre-forum and post-forum ballots. The panel sends ballot data to the ABA. It invites community members to participate in the forum upon recommendations from the class. It reviews and selects characters to be included in the forum and selects student volunteers to serve as clerk and facilitator. It provides a list of student and guest participants to the clerk. During the forum, panel members serve as members of the audience.

The Role of the Clerk

The clerk receives a list of characters and guest speakers from the panel. The clerk then schedules the speakers for the forum. She or he may organize the presentations so that, for example, each pro position is followed by a con position or all pro positions are presented first followed by con positions. The clerk presents the schedule of speakers to the facilitator. During the forum the clerk may wish to take notes.

The Role of the Facilitator

The facilitator opens the forum with a statement of purpose, such as "to explore what policies to adopt regarding free legal services for the poor." The facilitator calls on speakers to present their arguments in a five-minute period. He or she times the presentations and encourages audience members to ask questions and participate in a discussion of the issues. The facilitator closes the forum.

The Role of Audience Members

The audience, students who have not assumed roles as clerk, facilitator, or characters, participates by listening to testimony, asking questions, and discussing the issues.

The Role of Characters

Characters have five minutes to testify about their experience, viewpoint, and recommendation. They are questioned by the audience and should answer consistently within their role.

SAMPLE CHARACTER SKETCHES

Character 1

My name is Hammie Muldrow. I feel very strongly that the government should spend more money for legal services for civil cases.

Since I injured my back five years ago, I am no longer able to work. I have been receiving federal disability payments, which are my only source of income. One year ago, on my birthday, in fact, I received a letter informing me that I was no longer eligible for federal assistance. The letter explained that I could appeal the decision to stop my payments. What could I do? Without that check, I'd be out on the streets, living in shelters.

I went to the Legal Aid office in our community to see a lawyer. I was interviewed by a paralegal who told me that I had a basis for challenging the government. She said that unfortunately legal services could not accept my case because they were not taking new cases. She referred me to a private attorney who sometimes takes cases for free. He was also unable to help me. As I desperately considered what I could do, the legal services paralegal called me and said that they would now be able to take my case. Several cases had unexpectedly been settled. I would never have been able to handle this very complicated case by myself. With legal services help, my benefits were returned to me.

I never understood why the government cut off my benefits or how the legal services lawyer was able to get them back. The legal system gets very technical. How can people, like me, protect our rights in our legal system if free lawyers aren't provided to us? In my case, if I had not received this help, I would have lost my benefits. People have a right to be treated fairly by the government. The government should have to pay for lawyers to ensure this right when people don't have the money to pay for lawyers who understand the system.

Character 2

My name is Tinh Doan. My family owns and runs a small grocery store. Five months ago, three people robbed the store when I was on duty. They beat me so badly that I almost died. They also stole all the money in the store. My hospital bills are for tens of thousands of dollars. My store has had to close. As the result of the beating, I will always be blind in one eye and I have dizzy spells and headaches regularly.

Each of the accused robbers has a lawyer that taxpayers—including me—pay for. Now they are free on bail because their lawyers argued that they will show up for trial.

These three robbers are costing taxpayers several thousands of dollars in legal representation. It is clear that these people are the ones who beat me up. We are wasting money paying for them to have lawyers. This money should be put into services and restitution for crime victims. Do you know how much money I have received? Nothing yet! I have been told that I am eligible to receive some payment from the victim fund, but it will not cover the losses that I have suffered.

The government must balance the rights of its citizens and make decisions on priorities. Surely, the rights of criminal victims should be protected more than those of the criminals. Of course, sometimes there are times that the government makes mistakes and arrests the wrong person. Really, though, that doesn't happen too often.

My position is balanced. I am in favor of eliminating free legal services for criminal defendants when there is sufficient evidence that they are guilty.

Character 3

My name is Steve Allerman. I was released from prison two months ago after serving ten years on drug charges. I would like to point out the reality of the type of representation people like me receive from public defenders. I and others who are accused of crimes that could send us to jail receive free representation from public defenders.

We poor people get assigned a lawyer, paid for by the same government that pays the prosecutor who is trying to get us convicted. None of us has any trust in the public defender. I've had a lot of public defenders because I have a long history of charges.

Many of the defenders are fresh out of law school and were so nervous in court that I never had a chance of getting a fair deal. They hate to come to the jail to see me because it takes a long time to get in for a visit. They don't return my telephone calls. They have way too many cases to give the time it takes to prepare a good case. Look at O. J. Simpson and his team of lawyers. How can you say that the American system of justice is fair when there's no way I could ever have that kind of talent working for me?

In one of my cases, the public defender couldn't find my witnesses because I only knew their street names and he couldn't get anyone to talk to him. I was locked up in jail and couldn't get out. I was convicted because no witnesses were called for me.

I propose that people charged with crimes get vouchers with which they can hire good attorneys to represent them. They should be able to fire the lawyers when they're doing a bad job.

Character 4

My name is Dana Smith. I am a policy analyst in a think tank. There is a crisis in the criminal justice system. Year after year, Congress, state legislatures, and citizen initiatives make more activities a crime and demand prison terms for more and more offenses. This year, for instance, voters passed the "Three Strikes and You're Out" initiative in our state, which puts criminals with three felony convictions in prison for life without parole. With increasing prison populations and increased crime rates, the criminal justice system is almost at a standstill.

A major portion of our budget pays to support our criminal justice system. It seems senseless not to undertake some major reform of this system.

One proposal that I favor is to abandon the adversarial system in which both sides fight out the case like enemies. Instead, I favor a system like the German system in which the judge investigates the case, questions the witnesses, and decides the case. This would allow us to focus resources more effectively in the search for truth and justice. Many people believe that our system of justice is more like a game, the one with the best lawyer winning. This would change that. Criminal defendants would be more likely to take responsibility for their acts rather than blame their lawyer for their situation.

Forum Ballot

Free Legal Representation of Poor People: What Should Society Do?

The American Bar Association wants to know what you think and feel about the government's role in providing free legal representation to poor people.

The student panel will collect ballots completed before and after the forum. The panel will compile and summarize the data and send the summaries to the Public Education Division, American Bar Association, 541 N. Fairbanks Court, Chicago, Il 60611-3314.

For the following items, place a ✓ in the box that best reflects your opinion.

Complete Funding	Partial Funding	No Funding	Not Sure

1. Do you think the government should pay, and if so, how, for lawyers to represent poor criminal defendants?
2. Do you think the government should pay, and if so, how, for lawyers to represent poor clients in civil cases?

3. Following are a series of proposals regarding funding of legal representation of poor people. For each indicate your level of support.
   a. Eliminate all funding for public defenders.
   b. Use money saved for victims of crime.
   c. People have a right to counsel in criminal cases only when they can afford to pay for a lawyer.
   d. Poor people have a right to a free lawyer in civil cases.
   e. Middle-class people should have government aid to pay part of the cost of lawyers in expensive cases.
   f. The government should fund legal services even though legal services brings some cases against the government.
   g. A poor person who has to go to court without a lawyer has equal protection of the laws and enjoys due process of law even though the other side is represented by a lawyer.

Support	Oppose	Not Sure

4. Several different proposals have been made concerning legal services. Rank how effective each would be on a scale of 1 to 10 in which 1 means least effective and 10 means most effective.
   a. Provide everyone in the United States with legal insurance. People would pay a monthly fee and then get an attorney when they need one.
   b. Make courts so simple that persons can use the courts to solve disputes without using a lawyer.
   c. Require everyone in a civil case to try to solve their dispute without lawyers before allowing the case to go to trial.
   d. In each case in which solving disputes without lawyers fails, both sides pay money to the court for the time of the judge and court personnel.

1	2	3	4	5	6	7	8	9	

5. Is this a pre-forum or post-forum ballot? (check one) ___ pre-forum ___ post-forum
6. Are you ___ Male ___ Female?
7. What is your ZIP Code? _____

73

Resources

Legal Services to the Poor

Center for Law and Education
955 Massachusetts Avenue
Cambridge, MA 02139

617/876-6611 FAX 876-0203

A grantee of the Legal Services Corporation (below), the Center for Law and Education (CLE) "takes a leadership role in improving the quality of public education for low-income students throughout the nation and to enable low-income communities to address their own public education problems effectively." CLE's activities include providing advice and collaboration on cases, publications, training, federal program advocacy, litigation, and assisting parent and student involvement in education. Some of the many school-related concerns CLE addresses are the educational rights of children with disabilities, the federal Chapter 1 program, vocational education, and school-to-work programs.

Children's Defense Fund
25 E Street, NW
Washington, DC 20001

202/628-8787 FAX 662-3540

Created in 1973, the Children's Defense Fund (CDF) is a nonprofit organization supported by foundations, corporations, and individuals. CDF's goal is "to educate the nation about the needs of children and encourage preventive investment in children before they get sick, drop out of school, suffer family breakdown, or get into trouble." CDF activities include public education, research, technical assistance, policy development, and national legislation, with particular attention to the needs of poor children and families. CDF will issue a major report on the costs of child poverty in late 1994.

Legal Services Corporation
750 1st Street, NE, 11th Floor
Washington, DC 20002-4250

202/336-8800 FAX 336-8959

An independent, nonprofit corporation established by Congress in 1974, Legal Services Corporation (LSC) has a mission "to ensure equal justice for people living in poverty through the provision of high-quality legal representation and to further the ends of justice and improve the lives of poor people through the rule of law." This mission is accomplished primarily through funding and oversight of various grantee programs that provide direct services. (Two of the grantees are included in this list.) In 1993, LSC programs helped over 1.5 million individuals and families solve legal problems through advice and referral, brief services, dispute resolution, negotiation and settlement, and litigation. The majority of cases involve family issues, such as custody and protection from family violence, income maintenance for families and the elderly, consumer finance, housing, and juvenile matters.

National Center for Youth Law
114 Sansome Street, Suite 900
San Francisco, CA 94104

415/543-3307 FAX 956-9024

A grantee of the Legal Services Corporation, the National Center for Youth Law (NCYL) has a mission to improve the lives of children living in poverty and to use the law to protect children from the harms poverty causes. NCYL's services include free expert legal advice on youth law matters to legal services attorneys and child advocates; publications, such as the journal *Youth Law News*; and litigation on laws and public policies to improve the conditions in which poor children live—e.g., *Sullivan v. Zebley*, 493 U.S. 521 (1990), to entitle poor, disabled children to receive monthly Supplemental Security Income benefits.

National Clearinghouse for Legal Services
205 W. Monroe, 2nd Floor
Chicago, IL 60606

312/263-3830 FAX 263-3846

Serving as the central repository of national poverty law documents, as well as a disseminator of information to advocates for low-income clients, the National Clearinghouse for Legal Services, Inc., (NCLS) is the communication hub for the legal services community. NCLS services are available to advocates working in legal services programs funded by the Legal Services Corporation and to others working on behalf of low-income people. The NCLS Poverty Law Library, established in 1967, currently houses more than 51,000 cases and publications. Its documents are retrievable at no or low cost through the Legal Records Department. *Clearinghouse Review*, the premier publication of the legal issues affecting low-income people, is sent free to each attorney and paralegal practicing in a legal services program funded by LSC.

National Legal Aid & Defender Association
1625 K Street, NW, Suite 800
Washington, DC 20006-1604

202/452-0620 FAX 872-1031

As a private, nonprofit national-membership organization for local organizations, programs, and individuals that provide civil legal aid and criminal defense services to the poor, the National Legal Aid & Defender Association (NLADA) has two goals: to see that all America's poor people can get legal help when they need it in both civil and criminal proceedings and to ensure that this help is equal in quality to that provided to paying clients. Founded in 1911 by members of the private bar and 15 legal aid offices, NLADA provides training for professionals serving the poor and files amicus briefs at appellate levels on poverty law and indigent defense cases of national importance. NLADA publishes the *Directory of Legal Aid and Defender Offices in the United States and Territories*, a listing of general civil or criminal organizations, whether or not they are members of NLADA.

Equal Justice Topics

	Civil Law	Criminal Law	History	Who's Who	Student Activity
A Salute to the National Equal Justice Library	☆	☆	☆	☆	
History of Legal Aid in the United States	☆		☆	☆	
Heroes of Legal Aid	☆		☆	☆	
Benchmark Civil Cases	☆		☆		
Students Take Charge	☆				☆
History of Indigent Defense in the United States		☆	☆	☆	
Heroes of Indigent Defense		☆	☆	☆	
Benchmark Indigent Defense Cases		☆	☆		
Legal Services and American Cities	☆	☆	☆	☆	
The American Bill of Rights	☆	☆	☆		☆
Round Table	☆	☆			
Vignettes	☆	☆		☆	
You Be the Judge		☆			☆
Comparative Legal Services	☆	☆			
Justice for All?	☆				☆
Right to Counsel	☆	☆	☆		☆
Should the Poor Have Free Legal Representation?	☆	☆			☆

The most comprehensive, timely and affordable collection of LRE materials available. Period.

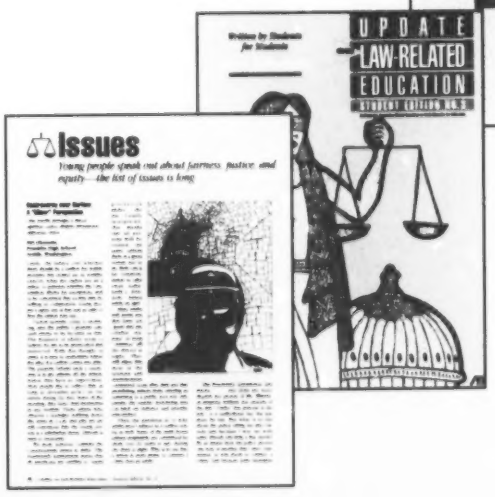
UPDATE *Plus*

This package from ABA/YEFC brings secondary level educators the "must have" resources they need throughout the school year. It includes:

☑ 3 issues of *Update on the Courts*, a new, one-of-a-kind publication that looks at significant Supreme Court cases *before and after* they are decided, and features classroom activities that illustrate the legal issues involved

☑ 3 issues of *Update on Law-Related Education*, the ABA's award-winning magazine filled with teacher-tested activities and thought-provoking articles that explore issues at the cutting edge of civic education

☑ 3 issues of *LRE Report* with a special ***Plus Page***, the leading national newsletter of LRE, featuring news about the issues, trends, people, and products that busy educators need to stay current and informed



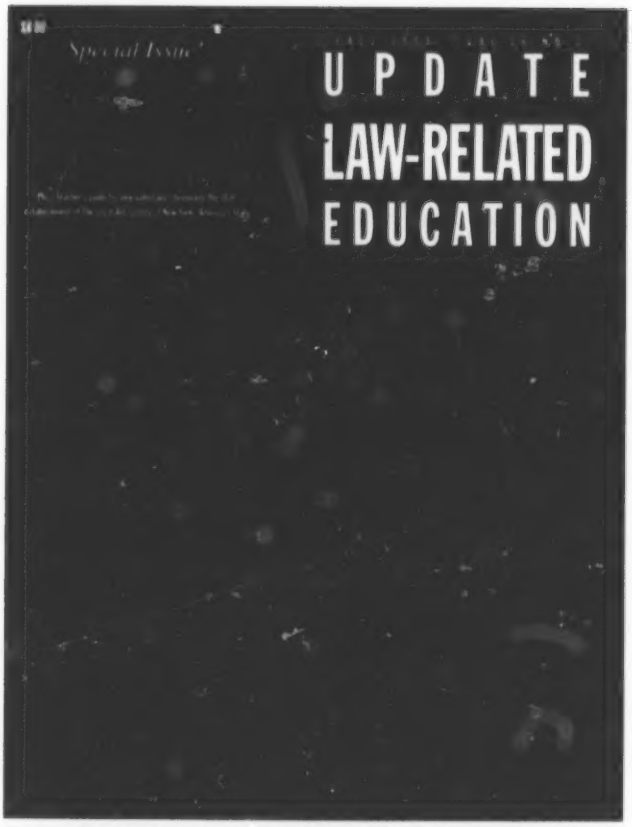
☑ 1 issue of the *Student Edition of Update on Law-Related Education*, a unique 16-page magazine for middle and secondary level students that spurs their interest in the law and legal issues with a variety of creative features and activities

But best of all, this package is affordable—a one-year subscription costs only $25.

BEST COPY AVAILABLE

American Bar Association
541 N. Fairbanks Court
Chicago, IL 60611-3314

BULK RATE
U. S. POSTAGE
PAID
PERMIT 114
EASTON, MD 21601



Featured on the front cover is the frieze (sculpture) above the Supreme Court entrance, showing enthroned Liberty flanked by Authority and Order. Other figures include Chief Justice John Marshall, William Howard Taft, and Charles Evans Hughes.

COMING THIS WINTER:

Special! Law Day Issue!
Liberty, Diversity, and the Law

Articles, lessons, and instructional resources focusing on:

- Multiculturalism and Free Speech
- Equal Protection and Sexual Orientation
- American Indian Cultures and the Constitution
- Diversity in the United States Today
- LRE Themes in Literature
- Lawful Language: Hate Speech and English Only

Plus! *Update on Law-Related Education*'s complete index of all issues—18 years worth! Entries include subjects, authors, and article titles. And an index for *Update on the Courts*. The UPDATE PLUS index will become a regular feature of each winter edition. Watch for its January 1995 debut!

SPECIAL COMMITTEE ON
Youth Education for Citizenship
AMERICAN BAR ASSOCIATION

BEST COPY AVAILABLE